

Ira Wagner

February 5, 2013

New York, NY

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 SECURITIES AND EXCHANGE COMMISSION,  
5 Plaintiff,  
6 vs.  
7 FABRICE TOURRE,  
8 Defendant.  
9 10-CV-3229(BSJ)(MHD)

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14 VIDEOTAPED DEPOSITION OF IRA WAGNER

15 Tuesday, February 5, 2013

16 New York, New York

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24 REPORTED BY:

25 Christina Diaz, CRR, RMR, CSR, CLR

Ira Wagner

February 5, 2013

New York, NY

Page 2	Page 4
<p>1 February 5, 2013</p> <p>2 9:02 a.m.</p> <p>3</p> <p>4 Videotaped deposition of IRA WAGNER, at</p> <p>5 the offices of Allen &amp; Overy, LLP, 1221 Avenue of</p> <p>6 the Americas, New York, New York, before Christina</p> <p>7 Diaz, a Certified Realtime and Registered Merit</p> <p>8 Reporter and Notary Public within and for the State</p> <p>9 of New York.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 WITNESS</p> <p>3 Ira Wagner</p> <p>4 EXAMINATION BY PAGE</p> <p>5 Mr. Rhys Davies 11, 177</p> <p>6 Mr. Schultz 175</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 (Exhibits attached to transcript)</p> <p>13 WAGNER DESCRIPTION PAGE</p> <p>14 Exhibit 1 Expert Report of Ira 10</p> <p>15 Wagner, December 20, 2012</p> <p>16 Exhibit 2 Rebuttal Report of Ira 10</p> <p>17 Wagner, January 18, 2012</p> <p>18 Exhibit 3 E-mail string beginning 34</p> <p>19 with e-mail dated 11/8/2006</p> <p>20 bearing Production Nos.</p> <p>21 GS MBS-3 7672496 through 97</p> <p>22 Exhibit 4 Declaration of Jörg 36</p> <p>23 Zimmermann, three pages</p> <p>24</p> <p>25</p>
Page 3	Page 5
<p>1 APPEARANCES</p> <p>2</p> <p>3 SECURITIES AND EXCHANGE COMMISSION</p> <p>4 Attorneys for Plaintiff</p> <p>5 100 F Street, N.E.</p> <p>6 Washington, DC 20549</p> <p>7 BY: CHRISTIAN D.H. SCHULTZ, ESQ.</p> <p>8 MATTHEW MARTENS, ESQ.</p> <p>9 BRIDGET FITZPATRICK, ESQ.</p> <p>10</p> <p>11 ALLEN &amp; OVERY, LLP</p> <p>12 Attorneys for Defendant Fabrice Tourre</p> <p>13 1221 Avenue of the Americas</p> <p>14 New York, NY 10020</p> <p>15 BY: ANDREW RHYS DAVIES, ESQ.</p> <p>16 PAMELA ROGERS CHEPIGA, ESQ.</p> <p>17 BRANDON D. ONEIL, ESQ.</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 KEVIN MARTH, Videographer</p> <p>21 ARUN SEN, Navigant Consulting</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXHIBITS (Continued)</p> <p>2 WAGNER DESCRIPTION PAGE</p> <p>3 Exhibit 5 Excerpt from The Financial 60</p> <p>4 Crisis Inquiry Report,</p> <p>5 three pages</p> <p>6 Exhibit 6 Wall Street Journal 63</p> <p>7 Article entitled Abacus</p> <p>8 Deal: As Bad as They Come,</p> <p>9 four pages</p> <p>10 Exhibit 7 Transcript of Scott Eichel 64</p> <p>11 dated May 3, 2010, 31 pages</p> <p>12 Exhibit 8 E-mail dated 1/15/07 74</p> <p>13 bearing Production No. SEC</p> <p>14 6443286</p> <p>15 Exhibit 9 E-mail dated 1/19/07 with 75</p> <p>16 attachment bearing Production</p> <p>17 Nos. SEC 6459332 through</p> <p>18 6459345</p> <p>19 Exhibit 10 E-mail string beginning with 79</p> <p>20 e-mail dated 6/1/07 with</p> <p>21 attachment bearing Production</p> <p>22 Nos. SEC 7844825 through</p> <p>23 7844916</p> <p>24</p> <p>25</p>

Ira Wagner

February 5, 2013

New York, NY

Page 6			Page 8		
1	E X H I B I T S (Continued)		1	E X H I B I T S (Continued)	
2	WAGNER DESCRIPTION PAGE		2	WAGNER DESCRIPTION PAGE	
3	Exhibit 11 E-mail string beginning with 81		3	Exhibit 20 Record of Recommendation, 145	
4	e-mail dated 6/6/07 with		4	Date of Decision: 3/27/07	
5	attachment bearing Production		5	bearing Production Nos. SEC	
6	Nos. SEC 7855367 through		6	9181746 through 9181760	
7	7855424		7	Exhibit 21 Record of Recommendation, 147	
8	Exhibit 12 E-mail dated 1/9/07 with 86		8	Date of Decision: 3/27/07	
9	attachment bearing Production		9	bearing Production Nos. SEC	
10	Nos. SEC 1062119 through		10	09767689 through 09767703	
11	1062120		11		
12	Exhibit 13 E-mail string beginning with 90		12		
13	e-mail dated 1/23/07 with		13		
14	attachment bearing Production		14	INFORMATION REQUESTS	
15	Nos. SEC 1066745 through		15	INSERTED INFORMATION - NONE -	
16	1067322		16	INSTRUCTIONS TO CERTIFY - NONE -	
17	Exhibit 14 CIFG Assurance North 95		17	RULING: - NONE -	
18	America, Inc. vs. J.P. Morgan		18	REQUESTS FOR PRODUCTION - NONE -	
19	Securities, LLC, Complaint,		19		
20	46 pages		20		
21	Exhibit 15 E-mail dated 3/5/07 with 104		21		
22	attachment bearing Production		22		
23	Nos. SEC 7076055 through		23		
24	7076070		24		
25			25		
Page 7			Page 9		
1	E X H I B I T S (Continued)		1	S T I P U L A T I O N S	
2	WAGNER DESCRIPTION PAGE		2		
3	Exhibit 16 CDO Asset Management 107		3	IT IS HEREBY STIPULATED AND AGREED,	
4	Proposal for ACA CLO		4	by and between counsel for the respective parties	
5	2007-2, Commitments		5	hereto, that the filing, sealing and certification	
6	Committee, February 12,		6	of the within deposition shall be and the same are	
7	2007 bearing Production		7	hereby waived;	
8	Nos. SEC 6480405 through		8		
9	6480407		9	IT IS FURTHER STIPULATED AND AGREED that	
10	Exhibit 17 E-mail string beginning with 113		10	all objections, except as to the form of the	
11	e-mail dated 6/29/07 with		11	question, shall be reserved to the time of the	
12	attachment bearing Production		12	trial;	
13	Nos. SEC 222080 through		13		
14	222088		14	IT IS FURTHER STIPULATED AND AGREED that	
15	Exhibit 18 E-mail dated 6/26/07 with 116		15	the within deposition may be signed before any	
16	attachment bearing Production		16	Notary Public with the same force and effect as if	
17	Nos. SEC 6662708 through		17	signed and sworn to before this court.	
18	6662980		18		
19	Exhibit 19 E-mail string beginning with 118		19		
20	e-mail dated 4/5/07 with		20		
21	attachment beginning with page		21		
22	bearing Production No. SEC		22		
23	3426345		23		
24			24		
25			25		

3 (Pages 6 to 9)

Ira Wagner

February 5, 2013

New York, NY

Page 10	Page 12
<p>1 I. Wagner</p> <p>2 (Wagner Exhibit 1, Expert Report of Ira</p> <p>3 Wagner, December 20, 2012, was marked for</p> <p>4 identification)</p> <p>5 (Wagner Exhibit 2, Rebuttal Report of</p> <p>6 Ira Wagner, January 18, 2012, was marked for</p> <p>7 identification)</p> <p>8 THE VIDEOGRAPHER: Good morning. This</p> <p>9 marks the start of tape labeled number one of</p> <p>10 the videotaped deposition of Mr. Ira Wagner</p> <p>11 in the matter of the Securities and Exchange</p> <p>12 Commission versus Fabrice Tourre in the</p> <p>13 United States District Court for the Southern</p> <p>14 District of New York.</p> <p>15 The deposition today is being held in</p> <p>16 the offices of Allen &amp; Overy at 1221 Avenue</p> <p>17 of the Americas in New York, New York on</p> <p>18 February 5, 2013 at approximately 9:02 a.m.</p> <p>19 My name is Kevin Marth. I'm the legal</p> <p>20 videographer today representing Alderson</p> <p>21 Reporting. Our court reporter today is Miss</p> <p>22 Christina Diaz also representing Alderson.</p> <p>23 At this time, will counsel please</p> <p>24 identify themselves for the record.</p> <p>25 MR. RHYS DAVIES: Andrew Rhys Davies;</p>	<p>1 I. Wagner</p> <p>2 gained as a senior banker and then a senior</p> <p>3 managing director at Bear Stearns; is that right?</p> <p>4 A. In CDOs, that was what I focused on at</p> <p>5 Bear Stearns. I joined Bears Stearns as a managing</p> <p>6 director. I was promoted to senior managing</p> <p>7 director in 1998, yes.</p> <p>8 And my prior experience before joining</p> <p>9 Bear Stearns was also in structured finance and</p> <p>10 securitizations.</p> <p>11 Q. And when were the first structured</p> <p>12 finance CDOs done, to your recollection?</p> <p>13 A. They were done in the late '80s at</p> <p>14 Drexel. I believe that was a first wave of CDOs.</p> <p>15 And they continued after that.</p> <p>16 Q. The CDOs that were done in the late '80s</p> <p>17 at Drexel, were those CDOs that were collateralized</p> <p>18 by structured finance instruments?</p> <p>19 A. No.</p> <p>20 Q. When were the first CDOs that were</p> <p>21 collateralized by structured finance instruments</p> <p>22 done?</p> <p>23 A. The first ones of those were in the very</p> <p>24 late '90s, I believe, '98, '99.</p> <p>25 Q. So after you had joined Bear Stearns?</p>
Page 11	Page 13
<p>1 I. Wagner</p> <p>2 Allen &amp; Overy, representing Mr. Tourre.</p> <p>3 MR. O'NEIL: Brandon O'Neil; Allen &amp;</p> <p>4 Overy, also representing Mr. Tourre.</p> <p>5 MS. CHEPIGA: Pamela Chopiga; Allen &amp;</p> <p>6 Overy, also representing Mr. Tourre.</p> <p>7 MR. SCHULTZ: Christian Schultz,</p> <p>8 representing the Securities and Exchange</p> <p>9 Commission.</p> <p>10 MR. MARTENS: Matthew Martens for the</p> <p>11 Securities and Exchange Commission.</p> <p>12 MS. FITZPATRICK: Bridget Fitzpatrick</p> <p>13 for the Securities and Exchange Commission.</p> <p>14 THE VIDEOGRAPHER: At this time, will</p> <p>15 the court reporter please swear in the</p> <p>16 witness and we may proceed.</p> <p>17 IRA WAGNER,</p> <p>18 having been duly sworn by a Notary</p> <p>19 Public, was examined and testified as</p> <p>20 follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. RHYS DAVIES:</p> <p>23 Q. Mr. Wagner, let me ask you about your</p> <p>24 experience in structured finance collateralized</p> <p>25 debt obligations. That's experience that you</p>	<p>1 I. Wagner</p> <p>2 A. After I had joined Bear Stearns, yes.</p> <p>3 Q. What is Bear Stearns?</p> <p>4 A. I guess it might be what was Bear</p> <p>5 Stearns. But it was a large investment bank</p> <p>6 that -- a US broker-dealer. Did all types of</p> <p>7 institutional investment banking, trading, sales,</p> <p>8 structuring securities, originations, et cetera.</p> <p>9 Q. It was an investment bank like Goldman</p> <p>10 Sachs?</p> <p>11 A. Yes.</p> <p>12 Q. And you said, I guess it may be what was</p> <p>13 Bear Stearns.</p> <p>14 What do you mean by that?</p> <p>15 A. Well, Bear Stearns was taken over in</p> <p>16 March of 2008 by JPMorgan. It entered into a</p> <p>17 crisis, I believe a liquidity crisis, and was</p> <p>18 rescued by JPMorgan.</p> <p>19 Q. Do you know what caused the liquidity</p> <p>20 crisis that led to Bear Stearns being rescued by</p> <p>21 JPMorgan?</p> <p>22 MR. SCHULTZ: Objection. Foundation.</p> <p>23 A. I mean, a liquidity crisis is when</p> <p>24 people are not willing to lend to the company.</p> <p>25 I don't have the specifics of what was</p>

4 (Pages 10 to 13)

Ira Wagner

February 5, 2013

New York, NY

Page 14	Page 16
<p>1 I. Wagner</p> <p>2 in their decision-making to do that.</p> <p>3 BY MR. RHYS DAVIES:</p> <p>4 Q. In addition to Bear Stearns, how many</p> <p>5 dealers were in the CDO business in the period 2000</p> <p>6 through 2007?</p> <p>7 A. There were certainly more than ten.</p> <p>8 Just about every major dealer worked in the CDO</p> <p>9 space certainly.</p> <p>10 Q. And was Citigroup one of those dealers?</p> <p>11 A. Citigroup was a dealer, yes.</p> <p>12 Q. UBS?</p> <p>13 A. UBS, yes.</p> <p>14 Q. And Merrill Lynch?</p> <p>15 A. Merrill, yes.</p> <p>16 Q. Credit Suisse?</p> <p>17 A. Credit Suisse, yes.</p> <p>18 Q. Deutsche Bank?</p> <p>19 A. Deutsche Bank was a dealer, yes.</p> <p>20 Q. RBS?</p> <p>21 A. RBS did CDOs.</p> <p>22 Q. Goldman Sachs?</p> <p>23 A. Yes, they did CDOs.</p> <p>24 Q. Morgan Stanley?</p> <p>25 A. Yes.</p>	<p>1 I. Wagner</p> <p>2 Q. How about Wachovia?</p> <p>3 A. Wachovia, they did some larger amounts</p> <p>4 of CDOs.</p> <p>5 Q. SocGen?</p> <p>6 A. SocGen did some. I mean, you can look</p> <p>7 up -- there are rankings of issuance for each year.</p> <p>8 I don't know where each of these rank. But that's</p> <p>9 certainly a way to look at relative size and market</p> <p>10 share. They changed from year to year.</p> <p>11 Q. What was Bear Stearns' share of the CDO</p> <p>12 market, if you recall?</p> <p>13 A. I don't recall exactly. I think we were</p> <p>14 certainly -- we were always in the top ten; in some</p> <p>15 years we were much higher. Certainly in the top</p> <p>16 five in many years in the 2000s.</p> <p>17 Q. Do you have a recollection of what the</p> <p>18 market share was that Bear Stearns had?</p> <p>19 A. I do not.</p> <p>20 Q. Do you know who Scott Eichel is?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Who is Mr. Eichel?</p> <p>23 A. He was a trader at Bear Stearns.</p> <p>24 Q. He was co-head of the mortgage</p> <p>25 department?</p>
Page 15	Page 17
<p>1 I. Wagner</p> <p>2 Q. Lehman Brothers?</p> <p>3 A. Yes.</p> <p>4 Q. Bank of America?</p> <p>5 A. Yes.</p> <p>6 Q. JPMorgan?</p> <p>7 A. Yes.</p> <p>8 Q. And was there a group of other dealers</p> <p>9 that were involved in the CDO space that had</p> <p>10 smaller market shares?</p> <p>11 MR. SCHULTZ: Objection. Form.</p> <p>12 Foundation.</p> <p>13 A. Were there other dealers that had</p> <p>14 smaller market shares, yes.</p> <p>15 BY MR. RHYS DAVIES:</p> <p>16 Q. And in that group, would you agree</p> <p>17 Barclay's was a member of that group?</p> <p>18 A. I don't know whether I would put</p> <p>19 Barclay's in the lower tier or upper tier. They</p> <p>20 were certainly another large dealer.</p> <p>21 Q. Calyon?</p> <p>22 A. Calyon did make an effort in the CDO</p> <p>23 space. I don't remember the years. I probably</p> <p>24 wouldn't consider them in the same vein as some of</p> <p>25 the others you have mentioned.</p>	<p>1 I. Wagner</p> <p>2 A. I don't know if that was his title or</p> <p>3 not.</p> <p>4 Q. Was a senior person at Bear Stearns?</p> <p>5 A. He was a senior person in fixed income,</p> <p>6 yes.</p> <p>7 Q. Are you aware that Mr. Eichel gave an</p> <p>8 interview to the Financial Crisis Inquiry</p> <p>9 Commission in May of 2010?</p> <p>10 A. I am not aware of his interview, no.</p> <p>11 Q. If I told that you Mr. Eichel told the</p> <p>12 FCIC that synthetic CDOs were not Bear Stearns core</p> <p>13 business practice, would you agree with that?</p> <p>14 MR. SCHULTZ: Objection. Foundation.</p> <p>15 A. I'm not sure I would agree with that.</p> <p>16 BY MR. RHYS DAVIES:</p> <p>17 Q. Do you recall testifying in another</p> <p>18 case, US Bank against Barclays Bank, that Bear</p> <p>19 Stearns did probably ten or twelve synthetic ABS</p> <p>20 CDOs?</p> <p>21 A. I don't recall if that was Bear Stearns</p> <p>22 or that I may have worked personally on them. So</p> <p>23 I'm not sure. I would have to read the testimony</p> <p>24 again.</p> <p>25 Q. Sitting here today, do you recall how</p>

5 (Pages 14 to 17)

Ira Wagner

February 5, 2013

New York, NY

<p style="text-align: right;">Page 18</p> <p>1 I. Wagner</p> <p>2 many synthetic CDOs Bear Stearns did?</p> <p>3 A. I don't have a number on the tip of my</p> <p>4 fingers, no.</p> <p>5 Q. Do you think it may have been ten to</p> <p>6 twelve?</p> <p>7 A. I think it was more than that.</p> <p>8 Q. Do you know how many more?</p> <p>9 A. I don't. And if you get into what is a</p> <p>10 synthetic CDO and which ones are they, I mean,</p> <p>11 there are synthetics of corporate securities which</p> <p>12 Bear Stearns did dozens of. There are hybrid CDOs</p> <p>13 which included synthetics in them which we did a</p> <p>14 lot of. So I just don't know how many more than</p> <p>15 twelve. I would say a lot more than twelve.</p> <p>16 Q. Let me ask you about synthetic CDOs</p> <p>17 collateralized by residential mortgage-backed</p> <p>18 securities.</p> <p>19 A. Okay.</p> <p>20 Q. How many CDOs of that character did Bear</p> <p>21 Stearns do?</p> <p>22 A. Is it where the collateral included CDS</p> <p>23 or it was entirely CDS?</p> <p>24 Q. Entirely synthetic CDOs collateralized</p> <p>25 by RMBS.</p>	<p style="text-align: right;">Page 20</p> <p>1 I. Wagner</p> <p>2 the group that put them together on all of them.</p> <p>3 Q. You referenced getting involved in many</p> <p>4 of the issues that came up. What were the issues</p> <p>5 that came up when there were innovations in</p> <p>6 synthetic CDOs?</p> <p>7 A. I mean, they're quite numerous. You</p> <p>8 know, you had to figure out how the CDS would work;</p> <p>9 how it fit into the structure. Among the issues</p> <p>10 were -- you had to be certain, for example, if</p> <p>11 there was a credit protection payment due on the</p> <p>12 CDS, how did the CDO achieve liquidity to do that.</p> <p>13 And there were a variety of ways to figure that</p> <p>14 out.</p> <p>15 The firm -- generally the CDS</p> <p>16 counterparty in these structured finance CDOs was</p> <p>17 the underwriting dealer. There were issues that</p> <p>18 affected the dealer in terms of -- was collateral</p> <p>19 required by the dealer in the -- for the CDS that</p> <p>20 they were entering into? When did it have to be</p> <p>21 posted? What were the conditions? There were just</p> <p>22 really innumerable issues to figure out to get</p> <p>23 these together.</p> <p>24 Q. How many cash CDOs did Bear Stearns put</p> <p>25 together that were collateralized by RMBS?</p>
<p style="text-align: right;">Page 19</p> <p>1 I. Wagner</p> <p>2 A. I don't know. I'd say somewhere</p> <p>3 probably the ten area. Something like that.</p> <p>4 Q. How many of those had static portfolios?</p> <p>5 A. Static portfolios, I don't remember.</p> <p>6 Q. And what was your role in connection</p> <p>7 with the ten or twelve CDOs that you referenced?</p> <p>8 A. Again -- well, the synthetics in RMBS</p> <p>9 largely began to take place in 2005 and afterwards.</p> <p>10 Really, it was a 2006 phenomena into the beginning</p> <p>11 of 2007.</p> <p>12 During that time I ran the CDO group. I</p> <p>13 was a banker that ran the CDO group. I did work</p> <p>14 personally on several of them as well. Typically I</p> <p>15 would be involved, particularly when there was an</p> <p>16 innovation or a new type of transaction which these</p> <p>17 were, so that, you know, I would take part in the</p> <p>18 structuring and many of the issues that came up.</p> <p>19 Now tell me again your specific</p> <p>20 question. I'm sorry.</p> <p>21 Q. I asked, what was your role in</p> <p>22 connection with the ten or twelve synthetic CDOs</p> <p>23 collateralized by RMBS?</p> <p>24 A. Well, so I think that was it. I worked</p> <p>25 hands-on on several of them. And then supervised</p>	<p style="text-align: right;">Page 21</p> <p>1 I. Wagner</p> <p>2 A. Again, I don't have a specific number.</p> <p>3 Certainly dozens, I would think.</p> <p>4 Q. So did Bear Stearns do more cash CDOs</p> <p>5 than synthetic CDOs?</p> <p>6 A. Well, again, we did cash CDOs for longer</p> <p>7 because that was the nature of the market. I mean,</p> <p>8 synthetic RMBS CDOs really didn't come into play,</p> <p>9 like I said, until the 2005-'06 and after period.</p> <p>10 So any CDOs before that would have been</p> <p>11 cash. I mean, I don't have the total of cash and</p> <p>12 for what years versus synthetic. But I would say</p> <p>13 we were active in each of those sectors when those</p> <p>14 sectors were active in being issued.</p> <p>15 Q. In the period 2006-2007, how many RMBS</p> <p>16 CDOs, cash or synthetic, did Bear Stearns put</p> <p>17 together?</p> <p>18 A. Again, I would say more than ten.</p> <p>19 Perhaps more than twenty. I just don't have the</p> <p>20 deal list at this point.</p> <p>21 Q. Do you know what the notional amount of</p> <p>22 those CDOs combined was?</p> <p>23 A. I would just be guessing. I don't know.</p> <p>24 Q. Do you know how those deals have</p> <p>25 performed for the long investors?</p>

6 (Pages 18 to 21)

Ira Wagner

February 5, 2013

New York, NY

Page 22	Page 24
<p>1 I. Wagner</p> <p>2 A. I don't have any firsthand knowledge of</p> <p>3 how they performed, no.</p> <p>4 MR. SCHULTZ: Can we take a break for a</p> <p>5 quick second. We have lost our feed.</p> <p>6 THE VIDEOGRAPHER: Going off the record</p> <p>7 at 9:14 a.m.</p> <p>8 (Recess)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 9:18 a.m.</p> <p>11 MR. RHYS DAVIES: Can we have the last</p> <p>12 question and answer read back, please.</p> <p>13 (Record read)</p> <p>14 BY MR. RHYS DAVIES:</p> <p>15 Q. You don't know whether the long</p> <p>16 investors who bought notes in Bear Stearns issued</p> <p>17 RMBS CDOs in 2006-2007 have suffered a complete</p> <p>18 write-down in their principal?</p> <p>19 MR. SCHULTZ: Objection. Foundation.</p> <p>20 A. Could you say the question again.</p> <p>21 BY MR. RHYS DAVIES:</p> <p>22 Q. My question relates to long investors</p> <p>23 who bought notes in Bear Stearns CDOs,</p> <p>24 collateralized by RMBS in 2006-2007.</p> <p>25 My question is: Do you know whether</p>	<p>1 I. Wagner</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And could you tell us, what are the</p> <p>5 roles of each of those three groups of people:</p> <p>6 bankers, structurers and distribution</p> <p>7 professionals?</p> <p>8 A. Certainly.</p> <p>9 The bankers were the people that</p> <p>10 generally were responsible for the execution, the</p> <p>11 completion of the transaction. So they would -- a</p> <p>12 team of bankers would be assigned to each CDO.</p> <p>13 They would handle the day-to-day work involved in</p> <p>14 putting the CDO together, working with the rating</p> <p>15 agencies, working with the various outside third</p> <p>16 parties as well. Arrange for everything to take</p> <p>17 place that needed to take place at the right times.</p> <p>18 Would review all the documents for the transaction,</p> <p>19 comment on them, work through issues that came up.</p> <p>20 The structurers are the people that ran</p> <p>21 the models for the CDOs. So the structurers would</p> <p>22 work with the collateral constraints and other</p> <p>23 characteristics. They would have an understanding</p> <p>24 of how the rating agencies would evaluate the</p> <p>25 structure and would develop the various sizes of</p>
Page 23	Page 25
<p>1 I. Wagner</p> <p>2 those investors have suffered a complete write-down</p> <p>3 in their principal?</p> <p>4 MR. SCHULTZ: Objection. Foundation.</p> <p>5 A. I don't know the specific performance of</p> <p>6 any of the transactions, no.</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. Generally, do you know the performance</p> <p>9 of the transactions?</p> <p>10 A. Of the Bear Stearns transactions or of</p> <p>11 CDO transactions generally?</p> <p>12 Q. The Bear Stearns CDOs collateralized by</p> <p>13 RMBS.</p> <p>14 A. I don't know the specifics of the</p> <p>15 performance of the Bear Stearns CDOs, no.</p> <p>16 Q. We've marked as Wagner Exhibits 1 and 2,</p> <p>17 copies of your expert report dated December 20,</p> <p>18 2012 and your rebuttal report dated January 18,</p> <p>19 2012.</p> <p>20 Referring you to your CV that's at the</p> <p>21 back of your initial report, Exhibit 1.</p> <p>22 A. Yes.</p> <p>23 Q. You said that at Bear Stearns you</p> <p>24 supervised a team of 40, including bankers,</p> <p>25 structurers and distribution professionals,</p>	<p>1 I. Wagner</p> <p>2 the tranches that would be issued. They would do</p> <p>3 cash flow analysis for the transactions. They</p> <p>4 would do the analysis that the rating agencies</p> <p>5 required, and respond to other inquiry for</p> <p>6 structural cash flows perhaps from investors, from</p> <p>7 traders, from others.</p> <p>8 The distribution team, there were a</p> <p>9 number of people that were involved in what we</p> <p>10 called new issue distribution. So they maintained</p> <p>11 relationships and dialogue with principal investors</p> <p>12 in the market. They would be both kind of</p> <p>13 distribution for the product generally, where they</p> <p>14 would be educating investors about CDOs, about</p> <p>15 different offerings in the market. They would also</p> <p>16 try to identify interest in particular types of</p> <p>17 CDOs or classes of CDOs. And then they would be</p> <p>18 involved when a transaction was being marketed in</p> <p>19 coordinating the specific marketing of a CDO,</p> <p>20 generally with investors directly as well as with</p> <p>21 the sales force.</p> <p>22 Q. Was there some reason to have a separate</p> <p>23 group of people who you classify as distribution</p> <p>24 professionals having the interactions with</p> <p>25 investors?</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 I. Wagner</p> <p>2 A. Was there a reason for it? Well, there</p> <p>3 was continuing dialogue. I think there was enough</p> <p>4 work to do, so that outside of an individual</p> <p>5 transaction, the distribution people would have a</p> <p>6 good understanding of what different investors were</p> <p>7 looking for at a particular point in time. And</p> <p>8 that dialogue was ongoing.</p> <p>9 Again, we did a large number of CDOs, so</p> <p>10 there was room for someone to specialize in doing</p> <p>11 that.</p> <p>12 Q. Is there some reason that you wouldn't</p> <p>13 have the bankers or the structurers carrying out</p> <p>14 this distribution work that you described?</p> <p>15 A. Well, the bankers would typically be</p> <p>16 involved with the distribution of an individual</p> <p>17 transaction that they were working on.</p> <p>18 But, again, there were many different</p> <p>19 types of transactions. So it made sense to both</p> <p>20 have the banker be available and participate in the</p> <p>21 distribution of that specific transaction, but that</p> <p>22 a small professional team would also generally know</p> <p>23 and be in contact with investors on a regular basis</p> <p>24 about the product.</p> <p>25 Q. When you described the role of the</p>	<p style="text-align: right;">Page 28</p> <p>1 I. Wagner</p> <p>2 If there were synthetics, there would be, you know,</p> <p>3 the various swap documents as well. And then the</p> <p>4 attorneys would also draft the offering circular,</p> <p>5 the preliminary offering circular and the final</p> <p>6 offering circular for each transaction.</p> <p>7 Q. When you were senior managing director</p> <p>8 at Bear Stearns in the year 2006, what was your</p> <p>9 salary and bonus?</p> <p>10 MR. SCHULTZ: Objection. Relevance.</p> <p>11 Foundation.</p> <p>12 A. My salary, and I think the salary of all</p> <p>13 senior managing directors, I believe was \$250,000.</p> <p>14 I really don't remember my 2006 bonus.</p> <p>15 In any event, I'm not really sure how to</p> <p>16 characterize it, because a lot of it was in</p> <p>17 deferred compensation. And as you might imagine,</p> <p>18 deferred compensation at Bear Stearns didn't prove</p> <p>19 to have value over the long run, so... But I don't</p> <p>20 remember.</p> <p>21 BY MR. RHYS DAVIES:</p> <p>22 Q. You have no recollection of what your</p> <p>23 2006 bonus was?</p> <p>24 A. It was -- it was several million</p> <p>25 dollars. But I don't recall. And a lot of that I</p>
<p style="text-align: right;">Page 27</p> <p>1 I. Wagner</p> <p>2 bankers, you referred to being in contact with</p> <p>3 outside third parties.</p> <p>4 What did you mean by that?</p> <p>5 A. Well, a CDO has a large number of third</p> <p>6 parties who participate in the transaction.</p> <p>7 There's the collateral manager, of course. And</p> <p>8 there's a trustee. There are, again, the</p> <p>9 attorneys. There is outside -- and that's</p> <p>10 generally outside counsel. There's the manager's</p> <p>11 counsel, the trustee's counsel. There's some audit</p> <p>12 work that's done confirming some of the cash flows</p> <p>13 and numbers that are in the prospectus. So there</p> <p>14 is a fairly large number of people outside of the</p> <p>15 firm that are involved in each transaction. And</p> <p>16 the banking team again is responsible for getting</p> <p>17 to the -- getting everyone to the finish line on</p> <p>18 time. And they do that. They coordinate that.</p> <p>19 Q. What was the role of the outside</p> <p>20 attorneys that you mentioned?</p> <p>21 A. The outside attorneys would be the</p> <p>22 principal drafters of the transaction documents.</p> <p>23 The principal documents -- the principal operative</p> <p>24 documents of the transaction would generally be a</p> <p>25 bond indenture, a collateral management agreement.</p>	<p style="text-align: right;">Page 29</p> <p>1 I. Wagner</p> <p>2 never received.</p> <p>3 Q. When you say "several million dollars,"</p> <p>4 what do you mean by that?</p> <p>5 A. More than one. I'm not sure I remember</p> <p>6 specifically.</p> <p>7 Q. You say it was more than one. Do you</p> <p>8 think it was more than ten?</p> <p>9 A. It was definitely not more than ten.</p> <p>10 Q. So it was between one and ten. Can you</p> <p>11 narrow it down any more than that?</p> <p>12 A. Yes. It was between two and four, I</p> <p>13 think. Something like that.</p> <p>14 Q. And same question for the year 2007,</p> <p>15 your salary and bonus?</p> <p>16 A. The salary was the same. 2007, it was</p> <p>17 between one and two, I think.</p> <p>18 Q. Referring you to Exhibit 1, to your</p> <p>19 opening report. This is the list of documents that</p> <p>20 you considered in forming your opinions in this</p> <p>21 case; is that right?</p> <p>22 A. Yes. Yes, it is.</p> <p>23 Q. When were you first contacted to become</p> <p>24 an expert witness in this case?</p> <p>25 A. I think it was late in the spring of</p>

Ira Wagner

February 5, 2013

New York, NY

Page 30	Page 32
<p>1 I. Wagner</p> <p>2 2010.</p> <p>3 Q. 2010?</p> <p>4 A. I think so.</p> <p>5 Q. Do you remember what month?</p> <p>6 A. I'm thinking maybe June. May or June.</p> <p>7 I'm not sure.</p> <p>8 Q. When did you review the materials listed</p> <p>9 in Exhibit 1 to your opening report?</p> <p>10 A. I reviewed the investigative testimony</p> <p>11 and exhibits in the fall of that year. And then I</p> <p>12 think the depositions and exhibits were, you know,</p> <p>13 somewhere after they were done, which I think was</p> <p>14 in -- generally in the spring of 2011.</p> <p>15 Q. Looking at Wagner Exhibit 2, which is</p> <p>16 your rebuttal report.</p> <p>17 A. Yes.</p> <p>18 Q. There is an Exhibit 1 there, too, is</p> <p>19 that correct, which lists additional documents that</p> <p>20 you considered in formulating your opinions in your</p> <p>21 rebuttal report?</p> <p>22 A. Yes. In addition to everything that was</p> <p>23 already listed, that's correct.</p> <p>24 Q. Besides the documents listed in Exhibit</p> <p>25 1 to your opening report and Exhibit 1 to your</p>	<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection. Foundation.</p> <p>3 A. I believe what I listed was what I saw,</p> <p>4 which I think was the declaration of IKB -- or of</p> <p>5 Zimmermann. That's what I saw.</p> <p>6 BY MR. RHYS DAVIES:</p> <p>7 Q. That's all you've seen in terms of</p> <p>8 evidence from IKB?</p> <p>9 MR. SCHULTZ: Objection. Form.</p> <p>10 A. The two things I listed here, I think.</p> <p>11 The declaration and the record of recommendation</p> <p>12 were two things that I had from IKB.</p> <p>13 BY MR. RHYS DAVIES:</p> <p>14 Q. Now, one of the opinions you have</p> <p>15 expressed in your opening report is that you</p> <p>16 consider it unlikely that Abacus would have been</p> <p>17 completed if potential collateral managers and</p> <p>18 investors knew of Paulson's interest and</p> <p>19 involvement in the transaction; is that correct?</p> <p>20 And I can direct you to paragraph 77.</p> <p>21 A. 77?</p> <p>22 Q. 77.</p> <p>23 A. Okay. Yes. That's the opinion I state</p> <p>24 there.</p> <p>25 Q. And that's because, first of all, you</p>
Page 31	Page 33
<p>1 I. Wagner</p> <p>2 rebuttal report, have you considered any other</p> <p>3 documents in coming to your opinions in this case?</p> <p>4 A. No.</p> <p>5 MR. SCHULTZ: Objection. Form.</p> <p>6 Foundation.</p> <p>7 A. These are the ones I relied on.</p> <p>8 BY MR. RHYS DAVIES:</p> <p>9 Q. One of the documents that you identify</p> <p>10 in Exhibit 1 to your opening report is the SEC's</p> <p>11 complaint and its amended complaint. Is that</p> <p>12 right?</p> <p>13 A. Yes. I read both.</p> <p>14 Q. Have you assumed that the statements in</p> <p>15 the complaint and the amended complaint are</p> <p>16 accurate for purposes of formulating your opinions?</p> <p>17 A. No. I don't think I did that.</p> <p>18 Q. Now, your understanding is that IKB was</p> <p>19 one of the two purchasers of the Abacus notes; is</p> <p>20 that right?</p> <p>21 A. My understanding is IKB made the</p> <p>22 investment recommendation technically. I don't</p> <p>23 believe it was IKB that invested.</p> <p>24 Q. Have you seen any deposition testimony</p> <p>25 from any current or former employee of IKB?</p>	<p>1 I. Wagner</p> <p>2 read the testimony of the ACA witnesses and you</p> <p>3 conclude that it's unlikely that ACA would have</p> <p>4 agreed to serve as portfolio selection agent if the</p> <p>5 company understood Paulson's interest in Abacus; is</p> <p>6 that right?</p> <p>7 A. That was what was in their testimony.</p> <p>8 That's one of the things I considered in arriving</p> <p>9 at that opinion. Not the only thing; but, yes.</p> <p>10 Q. What else did you consider?</p> <p>11 A. I considered -- I mean, first of all, I</p> <p>12 considered the general experience I had in the CDO</p> <p>13 market, and communication and knowledge of how</p> <p>14 investors looked at CDOs through the many years</p> <p>15 that I worked on it. So I think as a general</p> <p>16 matter I thought about how CDO investors evaluate</p> <p>17 transactions.</p> <p>18 Then we had the specific testimony of</p> <p>19 Laura Schwartz and Alan Roseman who both stated</p> <p>20 that they would not have participated. And in</p> <p>21 Zimmermann's declaration, he also comes to a</p> <p>22 similar conclusion, I believe.</p> <p>23 Q. You have a statement in paragraph 78 of</p> <p>24 your report where you write: "Goldman knew that</p> <p>25 IKB's interest was contingent on finding an</p>

9 (Pages 30 to 33)

Ira Wagner

February 5, 2013

New York, NY

Page 34	Page 36
<p>1 I. Wagner</p> <p>2 acceptable collateral manager."</p> <p>3 Do you see that sentence?</p> <p>4 A. Let me just get to it. Yes.</p> <p>5 Q. You write, "This is evident from an</p> <p>6 e-mail chain among Jonathan Egol and Michael Narthey</p> <p>7 of Goldman and Jörg Zimmermann of IKB."</p> <p>8 A. Yes.</p> <p>9 MR. RHYS DAVIES: Let's mark as the next</p> <p>10 exhibit that e-mail chain.</p> <p>11 (Wagner Exhibit 3, E-mail string</p> <p>12 beginning with e-mail dated 11/8/2006 bearing</p> <p>13 Production Nos. GS MBS-3 7672496 through 97,</p> <p>14 was marked for identification)</p> <p>15 BY MR. RHYS DAVIES:</p> <p>16 Q. If I understand it correctly,</p> <p>17 Mr. Wagner, you are quoting in your report the</p> <p>18 sentence which appears in the e-mail on November 8,</p> <p>19 2006 at 12:20 a.m., where Mr. Zimmermann writes:</p> <p>20 "To make this project a success, we need to work</p> <p>21 with a manager already well known at IKB"?</p> <p>22 A. I mean, that's the sentence there. I</p> <p>23 refer to the whole chain. But that is the sentence</p> <p>24 there.</p> <p>25 Q. What makes you think that this e-mail</p>	<p>1 I. Wagner</p> <p>2 A. If I didn't list it, I don't think I</p> <p>3 read it.</p> <p>4 MR. RHYS DAVIES: You referred a moment</p> <p>5 ago to Mr. Zimmermann's declaration. Let's</p> <p>6 mark that as the next exhibit.</p> <p>7 (Wagner Exhibit 4, Declaration of Jörg</p> <p>8 Zimmermann, three pages, was marked for</p> <p>9 identification)</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. Is this the declaration you were</p> <p>12 referring to a moment ago?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And in your rebuttal report you have</p> <p>15 referenced this declaration as demonstrating the</p> <p>16 importance of disclosure of Paulson's participation</p> <p>17 to IKB; is that correct?</p> <p>18 A. Could you point me in the rebuttal</p> <p>19 report what you are referring to?</p> <p>20 Q. Certainly. It's the rebuttal report,</p> <p>21 paragraph 11.</p> <p>22 A. And could you repeat the question.</p> <p>23 Q. My question was, in your rebuttal report</p> <p>24 you've referenced Mr. Zimmermann's declaration as</p> <p>25 demonstrating the importance of disclosure of</p>
Page 35	Page 37
<p>1 I. Wagner</p> <p>2 chain relates to the Abacus 2007-AC1 transaction?</p> <p>3 A. Well, I think it relates to the idea of</p> <p>4 the AC1 transaction. I mean, clearly the AC1 is</p> <p>5 not specifically mentioned here. And it wasn't</p> <p>6 marketed or issued until later in, namely, early</p> <p>7 2007. But much of what's in here refers to a</p> <p>8 structure and a type of security that by and large</p> <p>9 is what Abacus was, I think.</p> <p>10 Q. Directing you to the first e-mail, which</p> <p>11 is at the bottom of the chain, the November 7, 2006</p> <p>12 e-mail at 8:15 a.m. It begins -- this is from</p> <p>13 Jonathan Egol to Michael Narthey. "Michael,</p> <p>14 regarding the managed synthetic program."</p> <p>15 Do you know what the managed synthetic</p> <p>16 program was?</p> <p>17 A. I don't know specifically what Goldman's</p> <p>18 managed synthetic program was, no.</p> <p>19 Q. Do you know who Michael Narthey is?</p> <p>20 A. Only from reading these materials.</p> <p>21 Q. Fabrice Tourre is not on this e-mail</p> <p>22 chain at all, correct?</p> <p>23 A. No, he is not.</p> <p>24 Q. And you did not read Michael Narthey's</p> <p>25 deposition transcript; is that right?</p>	<p>1 I. Wagner</p> <p>2 Paulson's participation to IKB?</p> <p>3 A. Yes.</p> <p>4 Q. Would you agree with me that this</p> <p>5 declaration is somewhat short and perfunctory?</p> <p>6 MR. SCHULTZ: Objection. Form.</p> <p>7 A. I'm not familiar with what would</p> <p>8 generally be in a declaration. It seems to cover</p> <p>9 what is needed to me.</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. What do you mean when you say "it seems</p> <p>12 to cover what is needed"?</p> <p>13 A. It explains -- if you read through it,</p> <p>14 it talks about what he did, what his roles were.</p> <p>15 Some of his understanding. I mean, if you look,</p> <p>16 you can go point by point as to what this is about.</p> <p>17 It says in 8 what he understood about</p> <p>18 the transaction, et cetera.</p> <p>19 Number twelve begins where he has been</p> <p>20 asked to consider: "Whether with respect to AC1,</p> <p>21 it would have been important or relevant for me to</p> <p>22 have known that a single hedge fund manager that</p> <p>23 bought protection on 100 percent of the reference</p> <p>24 portfolio of the AC1 deal played a significant role</p> <p>25 together with ACA in the process of selecting the</p>

10 (Pages 34 to 37)

Ira Wagner

February 5, 2013

New York, NY

Page 38	Page 40
<p>1 I. Wagner</p> <p>2 AC1 reference portfolio. Such facts, if true, and</p> <p>3 if I had known of them at the time of the AC1</p> <p>4 transaction, would have undermined my confidence in</p> <p>5 ACA's process of selecting the AC1 reference</p> <p>6 portfolio. Therefore I would not have supported</p> <p>7 the AC1 transaction."</p> <p>8 So I think it covers what someone would</p> <p>9 need to know about this from his perspective.</p> <p>10 Q. So in paragraph twelve it appears that</p> <p>11 Mr. Zimmermann is being asked to consider a</p> <p>12 hypothetical question; is that right?</p> <p>13 MR. SCHULTZ: Objection. Form.</p> <p>14 A. I guess there is an element of this</p> <p>15 being a hypothetical question, I think that's true.</p> <p>16 BY MR. RHYS DAVIES:</p> <p>17 Q. Have you seen any testimony from</p> <p>18 Mr. Zimmermann in which he is questioned about what</p> <p>19 means in his statements in this declaration?</p> <p>20 A. No, I have not.</p> <p>21 Q. Do you know what Mr. Zimmermann meant</p> <p>22 when he referred to "a significant role" in</p> <p>23 paragraph 12?</p> <p>24 MR. SCHULTZ: Objection. Foundation.</p> <p>25 A. I don't have firsthand knowledge of what</p>	<p>1 I. Wagner</p> <p>2 A. Yes.</p> <p>3 Q. And taking you back to Exhibit 3, do you</p> <p>4 see this e-mail chain that we looked at earlier is</p> <p>5 dated November 2006?</p> <p>6 A. These e-mails are from, yes, November of</p> <p>7 2006.</p> <p>8 Q. Does that cause you to question whether</p> <p>9 this e-mail chain, Exhibit 3, relates to the Abacus</p> <p>10 2007-AC1 transaction?</p> <p>11 MR. SCHULTZ: Objection. Form.</p> <p>12 A. No.</p> <p>13 BY MR. RHYS DAVIES:</p> <p>14 Q. Do you know whether Mr. Zimmermann is</p> <p>15 correct that it was in early 2007 that Goldman</p> <p>16 showed IKB the Abacus 2007-AC1 transaction?</p> <p>17 A. Well, I believe it's correct. I mean,</p> <p>18 there's continuing dialogue with IKB that I</p> <p>19 believe -- about the portfolio of AC1 in e-mail</p> <p>20 chains that I think were in February of 2007. So I</p> <p>21 think that qualifies as early 2007.</p> <p>22 Q. Have you ever seen any e-mail chains</p> <p>23 relating to the Abacus 2007-AC1 transaction dating</p> <p>24 from November 2006?</p> <p>25 A. That specifically mention AC1 in</p>
Page 39	Page 41
<p>1 I. Wagner</p> <p>2 he meant, no. But I think the words are fairly</p> <p>3 straightforward.</p> <p>4 BY MR. RHYS DAVIES:</p> <p>5 Q. Do you know what Mr. Zimmermann was told</p> <p>6 that caused him to express the views in this</p> <p>7 declaration?</p> <p>8 A. No, I do not.</p> <p>9 Q. Do you think it would be helpful to you</p> <p>10 in evaluating his declaration to know what he was</p> <p>11 told?</p> <p>12 A. If it was given to me, I would certainly</p> <p>13 consider it.</p> <p>14 Q. And if you learned that some of the</p> <p>15 facts that Mr. Zimmermann was told were not</p> <p>16 correct, would that undermine your confidence on</p> <p>17 relying on his declaration?</p> <p>18 A. From my review of the record, I don't</p> <p>19 see facts in his declaration that weren't correct.</p> <p>20 If there were facts that were identified that</p> <p>21 weren't correct, I would again consider them.</p> <p>22 Q. By the way, referring you to paragraph 6</p> <p>23 of Mr. Zimmermann's declaration, do you see there</p> <p>24 that it says that it was in early 2007 that Goldman</p> <p>25 showed IKB the Abacus 2007-AC1 transaction?</p>	<p>1 I. Wagner</p> <p>2 November of 2006?</p> <p>3 Q. Yes.</p> <p>4 A. I had not seen any that specifically</p> <p>5 mention AC1, no.</p> <p>6 Q. Do you know Jörg Zimmermann?</p> <p>7 A. I may have met him, but I don't recall</p> <p>8 specifically.</p> <p>9 Q. When do you think you may have met him?</p> <p>10 A. Somewhere after 2005 or '06, but, you</p> <p>11 know, we would met -- we certainly met people from</p> <p>12 IKB. I just don't recall if I met him individually</p> <p>13 or not.</p> <p>14 Q. Have you spoken with him about this</p> <p>15 case?</p> <p>16 A. Oh, no.</p> <p>17 Q. Have you spoken with any other current</p> <p>18 or former IKB employee about this case?</p> <p>19 A. No, I have not.</p> <p>20 Q. You have not reviewed any deposition</p> <p>21 testimony from a director of Loreley Financing,</p> <p>22 correct?</p> <p>23 A. I have not, no.</p> <p>24 Q. Mr. Wagner, you have opined that the</p> <p>25 empirical analyses that Dr. Bajaj and Dr. Cox have</p>

11 (Pages 38 to 41)

Ira Wagner

February 5, 2013

New York, NY

Page 42	Page 44
<p>1 I. Wagner</p> <p>2 performed is flawed; is that correct?</p> <p>3 A. I would like to look at the report. But</p> <p>4 I think I did characterize there as being flaws,</p> <p>5 yes.</p> <p>6 Q. Let's look at your rebuttal report,</p> <p>7 specifically paragraphs 41 and 42.</p> <p>8 A. Okay.</p> <p>9 Q. Let me ask you, first of all, have you</p> <p>10 conducted any empirical analysis of the RMBS</p> <p>11 tranches in the Abacus 2007-AC1 reference</p> <p>12 portfolio?</p> <p>13 A. No, I have not. That was not my role.</p> <p>14 Q. You were not asked to conduct that</p> <p>15 analysis?</p> <p>16 A. No.</p> <p>17 Q. Have you conducted any empirical</p> <p>18 analysis of the loan pools that made up the RMBS</p> <p>19 that were referenced in the Abacus 2007-AC1</p> <p>20 portfolio?</p> <p>21 A. No, I did not.</p> <p>22 Q. In paragraph 41 of your rebuttal report,</p> <p>23 you say that it's not relevant to compare the RMBS</p> <p>24 in the Abacus reference portfolio with other Baa2</p> <p>25 rated subprime RMBS from the 2006-2007 period; is</p>	<p>1 I. Wagner</p> <p>2 A. Of something that -- if I were going to</p> <p>3 try and address those questions -- that I might</p> <p>4 look at, yes, that I would consider.</p> <p>5 Q. But you have not yourself addressed</p> <p>6 those questions?</p> <p>7 A. What do you mean by that?</p> <p>8 Q. Well, you said that the -- that what you</p> <p>9 have described in paragraph 42 in Exhibit 2 is an</p> <p>10 example of the sort of analysis that could be done?</p> <p>11 A. It's an example, and with results of a</p> <p>12 way of looking at how a CDO might have performed</p> <p>13 versus other CDOs. I think it's a reasonable</p> <p>14 approach to take, yes.</p> <p>15 Q. Other than looking at the Wachovia</p> <p>16 study, you have not performed that kind of analysis</p> <p>17 yourself?</p> <p>18 A. No. That was not my role in this.</p> <p>19 Q. And if I understand paragraph 42 of your</p> <p>20 rebuttal report and Exhibit 2 correctly, what you</p> <p>21 have done is to compare Abacus against 42 other</p> <p>22 CDOs; is that correct?</p> <p>23 A. What I tried to do, to make it as fair</p> <p>24 -- to try and make it a fair and reasonable</p> <p>25 comparison, was to look at CDOs with similar rating</p>
Page 43	Page 45
<p>1 I. Wagner</p> <p>2 that right?</p> <p>3 A. Well, I disagree with their analysis,</p> <p>4 because I think they were trying to show -- they</p> <p>5 were trying to say, as I understood their reports,</p> <p>6 whether Abacus performed in line with RMBS</p> <p>7 generally. And my point is, I don't think that</p> <p>8 comparison was the relevant comparison to make.</p> <p>9 Q. You think the relevant comparison is to</p> <p>10 look at the Abacus portfolio versus the portfolios</p> <p>11 of other RMBS CDOs that you think had portfolio</p> <p>12 characteristics similar to Abacus?</p> <p>13 A. I think that would be a more relevant --</p> <p>14 a significantly more relevant analysis to look at</p> <p>15 than just comparing it to the market generally.</p> <p>16 Q. And that's the analysis that you have</p> <p>17 set forth in paragraph 42 of your rebuttal report?</p> <p>18 A. I set forth an example of an analysis</p> <p>19 that would be that type of analysis, that was a</p> <p>20 research piece that was done that -- that I think</p> <p>21 that type of analysis would be more relevant. And</p> <p>22 I talked about what was found in that one, yes.</p> <p>23 Q. So what you have set forth in paragraph</p> <p>24 42 and in Exhibit 2 to your rebuttal report is an</p> <p>25 example of that sort of analysis?</p>	<p>1 I. Wagner</p> <p>2 scores and similar times of issuance. Because if</p> <p>3 you were to look through that list, which is much</p> <p>4 larger, they had many more vintages of issuance.</p> <p>5 They had what are called high-grade deals as well</p> <p>6 as mezzanine deals, so they had deals that were</p> <p>7 backed largely by AAA or AA securities which didn't</p> <p>8 seem relevant. So I just tried to pick a range of</p> <p>9 time and rating scores that would seem to be</p> <p>10 relevant to Abacus.</p> <p>11 I think -- any other analysis would</p> <p>12 actually, I think, have made Abacus look worse. I</p> <p>13 think the average amount of downgrades with the</p> <p>14 larger universe in that report would have been</p> <p>15 lower than what's here.</p> <p>16 Q. And what this comparison does is to</p> <p>17 compare the exposure of Abacus to downgraded</p> <p>18 securities as of February 4, 2008 against these</p> <p>19 other CDOs; is that correct?</p> <p>20 A. It looks at how many assets -- yes, how</p> <p>21 many securities in each CDO portfolio were</p> <p>22 downgraded as of that date.</p> <p>23 Q. Downgraded by the ratings agency?</p> <p>24 A. Correct. By Moody's or S&amp;P.</p> <p>25 Q. What is the significance of February 4,</p>

12 (Pages 42 to 45)

Ira Wagner

February 5, 2013

New York, NY

Page 46	Page 48
<p>1 I. Wagner</p> <p>2 2008 as a reference date here?</p> <p>3 A. I believe they published this report</p> <p>4 periodically. And that was the date that I used.</p> <p>5 That was nine months -- approximately nine months</p> <p>6 after, I think. And the plaintiff's -- I'm sorry,</p> <p>7 the defendant's experts talk about this as well, as</p> <p>8 you get further into time, there was just an</p> <p>9 overwhelming amount of losses and distress in these</p> <p>10 securities. And it becomes harder to distinguish</p> <p>11 performance as you move further out in time. I</p> <p>12 didn't look at dozens of these, but I had this one</p> <p>13 available, the February 4th.</p> <p>14 Q. You said there was an overwhelming</p> <p>15 amount of losses. You mean there were overwhelming</p> <p>16 losses on all the CDOs issued in 2006-2007 that</p> <p>17 were collateralized by subprime RMBS?</p> <p>18 MR. SCHULTZ: Objection. Foundation.</p> <p>19 A. No. The losses on the RMBS themselves.</p> <p>20 BY MR. RHYS DAVIES:</p> <p>21 Q. You mean there were overwhelming losses</p> <p>22 on all the RMBS that were originated in 2006-2007?</p> <p>23 A. I mean, I hesitate to use --</p> <p>24 MR. SCHULTZ: Objection. Foundation.</p> <p>25 A. -- the word "all." But in general the</p>	<p>1 I. Wagner</p> <p>2 reasonable?</p> <p>3 A. I think it was enough time that people</p> <p>4 were beginning to understand that there was</p> <p>5 distress in the market and that securities got</p> <p>6 downgraded as their performance was deteriorating.</p> <p>7 So in that period, these securities were</p> <p>8 downgraded to a greater extent. Their performance</p> <p>9 appeared to be going worse than others in others of</p> <p>10 these portfolios. Eventually they might catch up.</p> <p>11 Q. And so is it your conclusion that the</p> <p>12 Abacus securities were downgraded more quickly than</p> <p>13 the securities in the other CDOs that you have</p> <p>14 listed in Exhibit 2?</p> <p>15 A. That's what the numbers show, yes.</p> <p>16 Q. Do you draw a conclusion from that, that</p> <p>17 you intend to offer as an opinion in this case?</p> <p>18 A. I think my conclusion is more really</p> <p>19 what I said here, which is that I don't think it</p> <p>20 was relevant to compare Abacus to the RMBS market</p> <p>21 generally. I think it would be more relevant to</p> <p>22 think about how CDOs were put together and what CDO</p> <p>23 portfolios looked like and how one CDO performs</p> <p>24 versus another.</p> <p>25 I mean, I think that's my principal</p>
Page 47	Page 49
<p>1 I. Wagner</p> <p>2 market of RMBS, particularly subprime issued in</p> <p>3 those years, performed very poorly.</p> <p>4 BY MR. RHYS DAVIES:</p> <p>5 Q. So what is the significance of choosing</p> <p>6 a date of February 4, 2008, which as you said, is</p> <p>7 about nine months after issuance of the Abacus</p> <p>8 transaction?</p> <p>9 MR. SCHULTZ: Objection. Form.</p> <p>10 A. I think I was looking to somewhere -- a</p> <p>11 reasonable amount of time after Abacus was issued</p> <p>12 but not -- if you were to look three years down the</p> <p>13 road, eventually most of these deals would likely</p> <p>14 converge to virtually all of the underlying assets</p> <p>15 being downgraded, I think. In terms of what</p> <p>16 actually happened.</p> <p>17 And then, you know, Dr. Bajaj talks</p> <p>18 extensively about ex post analysis not really being</p> <p>19 useful or valid for these purposes. Although he</p> <p>20 does it anyway. But at some point I think you have</p> <p>21 to -- if you are going to look forward, you have to</p> <p>22 pick a point. You have to pick a point to do it.</p> <p>23 I thought nine months was certainly reasonable.</p> <p>24 BY MR. RHYS DAVIES:</p> <p>25 Q. And why did you think that was</p>	<p>1 I. Wagner</p> <p>2 point of this section E.</p> <p>3 Q. What analysis did you perform to</p> <p>4 determine that the other CDOs on this Exhibit 2 are</p> <p>5 comparable to Abacus?</p> <p>6 A. I looked at the time of issuance, and I</p> <p>7 considered mostly the rating scores of those deals,</p> <p>8 given that the rating scores that I listed are the</p> <p>9 Baa category of Moody's. It would be anywhere from</p> <p>10 Baa1 to Baa3. So I think that was most relevant.</p> <p>11 It excluded some deals that had higher</p> <p>12 numbers which mean lower-rated collateral, as well</p> <p>13 as deals that had lower rating scores, which would</p> <p>14 be the high-grade collateral. Because I think the</p> <p>15 most relevant comparison would be essentially</p> <p>16 mezzanine Baa quality portfolios one to the other.</p> <p>17 Q. Do you know how many of the -- that the</p> <p>18 42 CDOs on this list, excluding Abacus, had static</p> <p>19 portfolios?</p> <p>20 A. I do not.</p> <p>21 Q. Did you do any analysis to determine how</p> <p>22 many individual securities are in the reference</p> <p>23 portfolios of all these 42 CDOs?</p> <p>24 A. I did not.</p> <p>25 Q. So do you know how many of these</p>

13 (Pages 46 to 49)

Ira Wagner

February 5, 2013

New York, NY

Page 50	Page 52
<p>1 I. Wagner</p> <p>2 securities were Baa2 rated subprime RMBS?</p> <p>3 A. Well, I know the average score, and that</p> <p>4 these were in the RMBS category. So -- but I don't</p> <p>5 know specifically each of the underlying</p> <p>6 portfolios. That's not generally publicly</p> <p>7 available information.</p> <p>8 Q. Directing your attention to the CDO</p> <p>9 that's at the end of your list, Sorin CDO VI.</p> <p>10 A. Yes.</p> <p>11 Q. What do you know about the reference</p> <p>12 portfolio of that CDO?</p> <p>13 A. I'm not familiar with the reference</p> <p>14 portfolio, other than that it's weighted average</p> <p>15 rating score is 307 -- or was 307.</p> <p>16 Q. If I told you that just over 2 percent</p> <p>17 of the reference portfolio was subprime RMBS, would</p> <p>18 you think that that CDO is meaningfully comparable</p> <p>19 with the Abacus 2007-AC1 CDO?</p> <p>20 MR. SCHULTZ: Objection. Foundation.</p> <p>21 A. Are you telling me that -- do you know</p> <p>22 what the rest of the portfolio -- I mean, I would</p> <p>23 have to know what the rest of the portfolio is.</p> <p>24 BY MR. RHYS DAVIES:</p> <p>25 Q. Let me ask you to assume for a moment</p>	<p>1 I. Wagner</p> <p>2 portfolio. But I myself tried to exclude what I</p> <p>3 thought were high-grade deals from this analysis.</p> <p>4 BY MR. RHYS DAVIES:</p> <p>5 Q. Did you do any work to examine the rate</p> <p>6 at which the Baa2 rated subprime RMBS in any of</p> <p>7 these CDOs was downgraded?</p> <p>8 A. No.</p> <p>9 Q. Mr. Wagner, have you provided testimony</p> <p>10 to any regulator concerning the work of your group</p> <p>11 at Bear Stearns?</p> <p>12 A. Not that I -- no. Not that I recall.</p> <p>13 Q. Not to the SEC?</p> <p>14 A. No. No.</p> <p>15 Q. Not to the New York State Attorney</p> <p>16 General's office?</p> <p>17 A. No.</p> <p>18 Q. Have you testified to any other federal,</p> <p>19 state or foreign regulator concerning your work at</p> <p>20 Bear Stearns?</p> <p>21 A. No.</p> <p>22 Q. Have you given any interviews to any of</p> <p>23 those types of regulators that I just mentioned?</p> <p>24 A. I mean, I'm not sure they're a</p> <p>25 regulator. I had -- I think gave you the quote. I</p>
Page 51	Page 53
<p>1 I. Wagner</p> <p>2 that 2 percent of the reference portfolio was</p> <p>3 subprime RMBS. My question is: Would you then</p> <p>4 regard Soren CDO 6 as a meaningful comparison with</p> <p>5 Abacus?</p> <p>6 MR. SCHULTZ: Objection. Form.</p> <p>7 Foundation.</p> <p>8 A. I think I would just have to know more</p> <p>9 about what the rest was.</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. Directing your attention to one of the</p> <p>12 CDOs that's listed about halfway down the list of</p> <p>13 Exhibit 2, Gulf Stream Atlantic CDO 2007-1.</p> <p>14 A. Yes.</p> <p>15 Q. What do you know about the reference</p> <p>16 portfolio of that CDO?</p> <p>17 A. Again, I know from what was quoted as</p> <p>18 the rating score.</p> <p>19 Q. Let me ask you to assume that 47.89</p> <p>20 percent of that reference portfolio consisted of</p> <p>21 AAA-rated securities. And let me ask you, based on</p> <p>22 that assumption would you think that that CDO was</p> <p>23 meaningfully comparable with Abacus 2007-AC1?</p> <p>24 MR. SCHULTZ: Objection. Foundation.</p> <p>25 A. I would like to look at the whole</p>	<p>1 I. Wagner</p> <p>2 had a call with the FCIC.</p> <p>3 Q. And have you testified in any private</p> <p>4 civil actions or arbitrations arising out of the</p> <p>5 work of your group at Bear Stearns?</p> <p>6 A. I testified at a FINRA arbitration.</p> <p>7 Q. When was that?</p> <p>8 A. I think it was in 2006 or '07.</p> <p>9 Q. What do you recall about that</p> <p>10 arbitration?</p> <p>11 A. It was an investor arbitration.</p> <p>12 Honestly, I don't recall that much more about it.</p> <p>13 Q. Do you recall what sort of claim was</p> <p>14 being made?</p> <p>15 A. I don't know.</p> <p>16 Q. This was a claim that an investor was</p> <p>17 making against Bear Stearns?</p> <p>18 A. Yes.</p> <p>19 Q. And do you recall the outcome of that</p> <p>20 arbitration?</p> <p>21 A. I actually don't know.</p> <p>22 Q. You referred to the interview that you</p> <p>23 provided to the Financial Crisis Inquiry</p> <p>24 Commission.</p> <p>25 Do you recall that that was on April 20,</p>

14 (Pages 50 to 53)

Ira Wagner

February 5, 2013

New York, NY

Page 54	Page 56
<p>1 I. Wagner</p> <p>2 2010?</p> <p>3 A. I don't recall the specific date.</p> <p>4 Q. Do you remember being questioned by the</p> <p>5 staff of the FCIC about the Abacus 2007-AC1</p> <p>6 transaction?</p> <p>7 A. I think that was the call that we talked</p> <p>8 a bit about it. That was what the call was about.</p> <p>9 Q. That was the purpose of the call, to ask</p> <p>10 you about the Abacus 2007-AC1 transaction?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall that the SEC had filed</p> <p>13 this case just a few days before you gave your</p> <p>14 interview to the FCIC?</p> <p>15 A. I think so.</p> <p>16 Q. Mr. Wagner, you read the financial</p> <p>17 press?</p> <p>18 A. (Nodding affirmatively).</p> <p>19 Q. Which are the publications that you</p> <p>20 read?</p> <p>21 A. I mean, I generally read the Wall Street</p> <p>22 Journal and The New York Times.</p> <p>23 Q. Do you recall that the financial press</p> <p>24 was writing about little else in that time period?</p> <p>25 A. Yes.</p>	<p>1 I. Wagner</p> <p>2 Q. And you don't recall who the second</p> <p>3 person from the Paulson hedge fund was?</p> <p>4 A. I don't.</p> <p>5 Q. Was it Brad Rosenberg?</p> <p>6 A. I don't know.</p> <p>7 Q. Was it Sihan Shu?</p> <p>8 A. I just don't know. I'm sorry.</p> <p>9 Q. What do you recall the people from the</p> <p>10 Paulson hedge fund telling you about what they were</p> <p>11 looking to do?</p> <p>12 A. I think that it was that they wanted to</p> <p>13 create a CDO where they were going to short and</p> <p>14 choose the shorts for an entire portfolio. And</p> <p>15 they wanted to have a CDO issued that would</p> <p>16 essentially be the long position for their short</p> <p>17 position.</p> <p>18 Q. Who else was at the meeting from Bear</p> <p>19 Stearns?</p> <p>20 A. I'm not sure. There were some people</p> <p>21 from the trading desk, I think, but I'm not sure</p> <p>22 specifically who. There would have been the</p> <p>23 salesperson that covered Paulson, but I don't --</p> <p>24 I'm not sure who that was.</p> <p>25 Q. Do you recall that Joe Evenchick was</p>
Page 55	Page 57
<p>1 I. Wagner</p> <p>2 Q. Do you recall telling the FCIC staff</p> <p>3 that the Paulson &amp; Co. hedge fund had approached</p> <p>4 your group at Bear Stearns to do the Abacus</p> <p>5 2007-AC1 transaction?</p> <p>6 A. I mean, I don't recall -- I mean, if</p> <p>7 it's what's in the material, then I think I said</p> <p>8 it. But if I could -- if that's what's in the --</p> <p>9 if that's what's in their writing. I mean, I don't</p> <p>10 remember the specifics of the conversation, but...</p> <p>11 Q. While you were at Bear Stearns, did you</p> <p>12 attend a meeting with representatives of the</p> <p>13 Paulson &amp; Co. hedge fund?</p> <p>14 A. I think I did, yes.</p> <p>15 Q. And when was that?</p> <p>16 A. 2006 or '07. I don't really remember</p> <p>17 more specifically than that.</p> <p>18 Q. What do you recall about that meeting?</p> <p>19 A. I think it was one meeting. And I think</p> <p>20 it was several people from Bear Stearns. And I</p> <p>21 believe it was Mr. Pellegrini. I think there was a</p> <p>22 second person from Paulson, although I don't</p> <p>23 remember who. And they talked about what they were</p> <p>24 looking to do. And we listened, and that was the</p> <p>25 meeting.</p>	<p>1 I. Wagner</p> <p>2 there?</p> <p>3 A. He might have been.</p> <p>4 Q. Do you recall that Scott Eichel was</p> <p>5 there?</p> <p>6 A. He might have been. I just don't know.</p> <p>7 Q. Do you recall that Jeff Hingst was</p> <p>8 there?</p> <p>9 A. Jeff Hingst. He was a salesperson. I</p> <p>10 mean, that could be the salesperson that was there;</p> <p>11 but, again, I'm not sure.</p> <p>12 Q. So you testified that the people from</p> <p>13 the Paulson hedge fund said that they wanted to</p> <p>14 create a CDO where they were going to short and</p> <p>15 choose the shorts for an entire portfolio, and they</p> <p>16 wanted to have a CDO issued that would essentially</p> <p>17 be the long position for their short position.</p> <p>18 Correct?</p> <p>19 A. I testified that. And in many ways I'm</p> <p>20 paraphrasing. I don't remember exactly the words</p> <p>21 they used. But that was the transaction that was</p> <p>22 being talked about by them and described.</p> <p>23 Q. Do you recall anything else that the</p> <p>24 Paulson &amp; Co. representatives said at that meeting?</p> <p>25 A. No.</p>

15 (Pages 54 to 57)

Ira Wagner

February 5, 2013

New York, NY

Page 58	Page 60
<p>1 I. Wagner</p> <p>2 Q. Do you recall any discussion about how</p> <p>3 the reference portfolio for the CDO they were</p> <p>4 discussing would be selected?</p> <p>5 A. Again, only that they were going to</p> <p>6 select it.</p> <p>7 Q. Was there any discussion about what</p> <p>8 types of RMBS the Paulson &amp; Co. fund would be</p> <p>9 intending to select for this portfolio?</p> <p>10 A. I just don't remember.</p> <p>11 Q. Do you recall any discussion about</p> <p>12 whether the Paulson &amp; Co. hedge fund would consider</p> <p>13 buying equity in the CDO that they were discussing?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Do you recall telling the FCIC that Bear</p> <p>16 Stearns declined to participate in this</p> <p>17 transaction?</p> <p>18 A. Again, if that's what's quoted there.</p> <p>19 Something to that extent, yes.</p> <p>20 Q. Who at Bear Stearns decided not to</p> <p>21 participate in this transaction?</p> <p>22 A. I think it was a consensus among the</p> <p>23 people in the group, including myself.</p> <p>24 Q. Why did Bear Stearns make that decision?</p> <p>25 A. My own view was that it was a conflict</p>	<p>1 I. Wagner</p> <p>2 exhibit an extract from the FCIC inquiry</p> <p>3 report.</p> <p>4 (Wagner Exhibit 5, Excerpt from The</p> <p>5 Financial Crisis Inquiry Report, three pages,</p> <p>6 was marked for identification)</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. Exhibit 5 consists of the front cover of</p> <p>9 the FCIC inquiry report together with pages 192 and</p> <p>10 193 and page 589, which has the footnote referenced</p> <p>11 on page 192.</p> <p>12 A. Okay.</p> <p>13 Q. Mr. Wagner, directing your attention to</p> <p>14 the bottom of page 192, you will see there that</p> <p>15 there is a reference to the SEC charging Goldman</p> <p>16 Sachs with fraud in connection with the Abacus</p> <p>17 2007-AC1 transaction?</p> <p>18 A. Yes.</p> <p>19 Q. And then at the top of page 193, you</p> <p>20 will see that there is a paragraph that describes</p> <p>21 the interview that you gave to the FCIC.</p> <p>22 And let me ask you to read that to</p> <p>23 yourself for a moment.</p> <p>24 A. (Witness reading document).</p> <p>25 Okay.</p>
Page 59	Page 61
<p>1 I. Wagner</p> <p>2 of interest that needed to be disclosed. And I</p> <p>3 thought that it would be very unlikely that -- with</p> <p>4 that disclosure that someone would purchase it.</p> <p>5 There were certainly also, you know,</p> <p>6 reputational aspects of, "Is this the type of deal</p> <p>7 you want to do?" But those were among the reasons.</p> <p>8 Q. And, again, I'm sorry if I asked this,</p> <p>9 but do you recall when this meeting was?</p> <p>10 A. I just -- 2006 or '07. I just don't --</p> <p>11 I couldn't give you anything more specific.</p> <p>12 Q. Did you take any notes while you were at</p> <p>13 the meeting that you have been testifying about</p> <p>14 with the representatives of the Paulson hedge fund?</p> <p>15 A. I don't think so.</p> <p>16 Q. Did you have a discussion after the</p> <p>17 meeting with your colleagues at Bear about the</p> <p>18 meeting that you had?</p> <p>19 A. Yes.</p> <p>20 Q. Was that an in-person discussion?</p> <p>21 A. Yes.</p> <p>22 Q. Did you have any e-mail discussions with</p> <p>23 your colleagues at Bear Stearns about the meeting?</p> <p>24 A. Not that I know of.</p> <p>25 MR. RHYS DAVIES: Let's mark as the next</p>	<p>1 I. Wagner</p> <p>2 Q. You will see that footnote 27, which is</p> <p>3 at the very end of that paragraph, it's on page</p> <p>4 589. And it refers to Ira Wagner interview by</p> <p>5 FCIC, April 20, 2010.</p> <p>6 A. Yes.</p> <p>7 Q. Does that refresh your recollection that</p> <p>8 that was the date on which you spoke with the FCIC?</p> <p>9 A. I presume this is correct. I don't know</p> <p>10 if it was, but I imagine that was the date.</p> <p>11 Q. Mr. Wagner, this paragraph at the top of</p> <p>12 page 193 says that you described as ridiculous the</p> <p>13 argument that Paulson's alleged involvement in</p> <p>14 selecting the Abacus portfolio was immaterial.</p> <p>15 Is that a reflection of what you said to</p> <p>16 the FCIC in April of 2010?</p> <p>17 A. I presume they quoted me. I don't know.</p> <p>18 I certainly did not agree with the contention that</p> <p>19 it was immaterial.</p> <p>20 Q. It also reflects that you told the FCIC</p> <p>21 that the structure encouraged Paulson to pick the</p> <p>22 worst assets.</p> <p>23 Do you recall saying that to the FCIC on</p> <p>24 April 20, 2010?</p> <p>25 A. Again, I don't know if they correctly</p>

16 (Pages 58 to 61)

Ira Wagner

February 5, 2013

New York, NY

Page 62	Page 64
<p>1 I. Wagner</p> <p>2 quoted me or not. I didn't listen to a tape of it.</p> <p>3 It seems consistent with what I thought about the</p> <p>4 transaction.</p> <p>5 Q. Finally, this paragraph reflects that</p> <p>6 you told the FCIC that having short investors</p> <p>7 select the reference collateral was a serious</p> <p>8 conflict?</p> <p>9 A. I think it is, yes.</p> <p>10 Q. Is that a view you expressed to the FCIC</p> <p>11 in April 20, 2010?</p> <p>12 A. Whether I said exactly those words or</p> <p>13 not -- I don't know if they quoted the interview</p> <p>14 correctly. But it's in line with what I thought.</p> <p>15 Q. But these were views that you held as of</p> <p>16 April 20, 2010?</p> <p>17 A. Yes.</p> <p>18 Q. A moment ago we were discussing the</p> <p>19 Wachovia report from February of 2008.</p> <p>20 Do you recall that?</p> <p>21 A. Yes.</p> <p>22 Q. When you wrote your rebuttal report,</p> <p>23 what caused you to think of the February 2008</p> <p>24 Wachovia report?</p> <p>25 A. Well, I was thinking about -- I mean, my</p>	<p>1 I. Wagner</p> <p>2 Q. My question is, was the first time that</p> <p>3 the Wachovia February 2008 report came to your</p> <p>4 attention, when it was referenced in the Wall</p> <p>5 Street Journal the day that you testified at the</p> <p>6 FCIC?</p> <p>7 A. I don't recall seeing this reference at</p> <p>8 that time, no.</p> <p>9 Q. But you do read the Wall Street Journal?</p> <p>10 A. Yes.</p> <p>11 MR. RHYS DAVIES: Why don't we take ten</p> <p>12 minutes.</p> <p>13 THE VIDEOGRAPHER: This marks the end of</p> <p>14 tape number one. We are going off the record</p> <p>15 at 10:15 a.m.</p> <p>16 (Recess)</p> <p>17 (Wagner Exhibit 7, Transcript of Scott</p> <p>18 Eichel dated May 3, 2010, 31 pages, was</p> <p>19 marked for identification)</p> <p>20 THE VIDEOGRAPHER: This marks the start</p> <p>21 of tape number two. We are back on the</p> <p>22 record at 10:27 a.m.</p> <p>23 BY MR. RHYS DAVIES:</p> <p>24 Q. We have marked as Wagner Exhibit 7 a</p> <p>25 transcript of an interview by Scott Eichel at the</p>
Page 63	Page 65
<p>1 I. Wagner</p> <p>2 reaction again to the Bajaj report -- and I think</p> <p>3 Dr. Cox does some similar analysis. And I thought</p> <p>4 that -- as I stated, I just didn't think comparing</p> <p>5 the performance of the CDO portfolio to RMBS</p> <p>6 generally was relevant. And I thought of some</p> <p>7 material that I had that might have suggested</p> <p>8 another type of approach to it, and that was the</p> <p>9 Wachovia article.</p> <p>10 Q. How did the Wachovia article first come</p> <p>11 to your attention; do you recall?</p> <p>12 A. I think in materials that I had received</p> <p>13 from the SEC, that there was some articles that</p> <p>14 they had given me, and that was one of them.</p> <p>15 MR. RHYS DAVIES: Let's mark the next</p> <p>16 exhibit.</p> <p>17 (Wagner Exhibit 6, Wall Street Journal</p> <p>18 Article entitled Abacus Deal: As Bad as They</p> <p>19 Come, four pages, was marked for</p> <p>20 identification)</p> <p>21 BY MR. RHYS DAVIES:</p> <p>22 Q. We have marked as Wagner Exhibit 6 an</p> <p>23 article from the Wall Street Journal dated April</p> <p>24 20, 2010.</p> <p>25 A. Yes.</p>	<p>1 I. Wagner</p> <p>2 FCIC on May 3, 2010. And as the front page of the</p> <p>3 document reflects, this is a transcript that Allen</p> <p>4 &amp; Overy has prepared based on the MP3 file that's</p> <p>5 available on the FCIC's website.</p> <p>6 Mr. Wagner, let me ask you to turn to</p> <p>7 page 16 of this transcript -- actually, I guess</p> <p>8 it's page 17. About halfway down the page.</p> <p>9 You haven't listened to Mr. Eichel's</p> <p>10 interview recording before, have you?</p> <p>11 A. No. I've never seen this or heard it.</p> <p>12 Q. And when I asked you earlier, you didn't</p> <p>13 recall whether Mr. Eichel was at the meeting with</p> <p>14 Paulson?</p> <p>15 A. I did not recall, no.</p> <p>16 Q. I want to refer you to the section in</p> <p>17 the middle of page 17 where Mr. Eichel to the FCIC,</p> <p>18 describing a meeting with the Paulson firm, says, I</p> <p>19 don't think it was a secret to anybody that he was</p> <p>20 looking to place a short on the housing market or</p> <p>21 the subprime market.</p> <p>22 Do you see that section of text?</p> <p>23 MR. SCHULTZ: Objection. Form.</p> <p>24 Foundation.</p> <p>25 A. I see it.</p>

17 (Pages 62 to 65)

Ira Wagner

February 5, 2013

New York, NY

<p style="text-align: right;">Page 66</p> <p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Let me ask you about the meeting with</p> <p>4 the Paulson firm that you were testifying about</p> <p>5 earlier.</p> <p>6 Does this refresh your recollection that</p> <p>7 at that meeting Mr. Pellegrini or someone else from</p> <p>8 the Paulson firm was clear about Paulson's</p> <p>9 intention to place a short on the housing market or</p> <p>10 the subprime market?</p> <p>11 A. I don't recall them talking about their</p> <p>12 strategy generally. I recall it more in the</p> <p>13 context of the transaction that they wanted to do.</p> <p>14 Q. Let me ask you to turn to page 19 of</p> <p>15 this same document. Let me ask you to focus on the</p> <p>16 text beginning on line 6 where Mr. Eichel says, "He</p> <p>17 left us with the impression of, because of</p> <p>18 previous, you know, uh, interactions with them that</p> <p>19 they would either want our help to select the worst</p> <p>20 possible deals or that I just had the impression</p> <p>21 that he would select the worst possible deals."</p> <p>22 Does this refresh your recollection</p> <p>23 about the meeting that you described earlier with</p> <p>24 representatives of the Paulson firm?</p> <p>25 MR. SCHULTZ: Objection. Form.</p>	<p style="text-align: right;">Page 68</p> <p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Is it consistent with your recollection</p> <p>4 of what was said at that meeting by representatives</p> <p>5 of the Paulson firm?</p> <p>6 A. I mean, I think it's generally</p> <p>7 consistent. I mean, he is really saying it's the</p> <p>8 impression he had. I'm not sure he is saying</p> <p>9 whether Paulson said any of this specifically or</p> <p>10 not.</p> <p>11 Q. Do you remember where the meeting took</p> <p>12 place?</p> <p>13 A. I think it was on the floor I worked on,</p> <p>14 but that's really about it.</p> <p>15 Q. It was at Bear Stearns?</p> <p>16 A. At Bear Stearns, yes.</p> <p>17 Q. Do you know whether anyone from the Bear</p> <p>18 Stearns' side took notes of the meeting?</p> <p>19 A. I don't know.</p> <p>20 Q. Mr. Wagner, would you agree that as of</p> <p>21 the end of the meeting with the Paulson firm that</p> <p>22 took place sometime in 2006 or 2007 you had formed</p> <p>23 a view that this was not an appropriate transaction</p> <p>24 that they were proposing to do?</p> <p>25 MR. SCHULTZ: Objection to form.</p>
<p style="text-align: right;">Page 67</p> <p>1 I. Wagner</p> <p>2 Foundation.</p> <p>3 A. It doesn't add anything to what I said</p> <p>4 earlier, no.</p> <p>5 BY MR. RHYS DAVIES:</p> <p>6 Q. Is it consistent with your recollection</p> <p>7 of the meeting that you were describing earlier?</p> <p>8 MR. SCHULTZ: Same objections.</p> <p>9 A. I mean, it doesn't -- it almost says he</p> <p>10 just doesn't really remember what they said. So I</p> <p>11 don't find it terribly enlightening, I guess.</p> <p>12 BY MR. RHYS DAVIES:</p> <p>13 Q. Let me ask you to turn to page 22 of</p> <p>14 this transcript. At the top of the page, beginning</p> <p>15 on line 4, where the transcript reflects Mr. Eichel</p> <p>16 saying, "In this particular transaction, once</p> <p>17 again, is that the impression that I had that, you</p> <p>18 know, Paulson would be selecting the assets to</p> <p>19 perform as poorly as they can."</p> <p>20 Does this refresh your recollection as</p> <p>21 to what was said at the meeting you were testifying</p> <p>22 about earlier?</p> <p>23 MR. SCHULTZ: Objection to form and</p> <p>24 foundation.</p> <p>25 A. It doesn't add anything, no.</p>	<p style="text-align: right;">Page 69</p> <p>1 I. Wagner</p> <p>2 A. You are asking when I formed that</p> <p>3 opinion or that I formed it at -- you're asking if</p> <p>4 I formed it at the end of that meeting?</p> <p>5 BY MR. RHYS DAVIES:</p> <p>6 Q. Yes.</p> <p>7 A. I think after the meeting my view was</p> <p>8 that it was -- that there was a conflict that would</p> <p>9 need to be disclosed, yes.</p> <p>10 Q. Had you formed the view that it was</p> <p>11 inappropriate for a short investor to have</p> <p>12 involvement in portfolio selection for a CDO?</p> <p>13 MR. SCHULTZ: Objection to form.</p> <p>14 A. I generally had that view. I don't know</p> <p>15 if I formed it immediately after or not. I</p> <p>16 certainly found it questionable, I thought, as the</p> <p>17 motivating reason to do a CDO.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Was there any discussion at the meeting</p> <p>20 with the Paulson firm about whether their</p> <p>21 involvement -- proposed involvement or interest</p> <p>22 would be disclosed in connection with the</p> <p>23 transaction they were proposing?</p> <p>24 A. I don't remember. I don't think we</p> <p>25 would have discussed it in a face -- in the</p>

18 (Pages 66 to 69)

Ira Wagner

February 5, 2013

New York, NY

Page 70	Page 72
<p>1 I. Wagner</p> <p>2 face-to-face meeting at that time.</p> <p>3 Q. Had you concluded that the transaction</p> <p>4 was inappropriate regardless of whether Paulson's</p> <p>5 role and involvement would be disclosed?</p> <p>6 A. I don't remember specifically.</p> <p>7 Q. Bear Stearns decided not to participate</p> <p>8 in this proposed transaction, correct?</p> <p>9 A. We did not do one, no.</p> <p>10 Q. Was that because you had determined that</p> <p>11 it was an inappropriate transaction to be proposed?</p> <p>12 A. I think it wasn't my only -- necessarily</p> <p>13 my decision. It was -- again, I think there was</p> <p>14 discussion and a consensus for these various</p> <p>15 reasons that it wasn't something that we were going</p> <p>16 to pursue.</p> <p>17 Q. Was the consensus at Bear Stearns that</p> <p>18 it was an inappropriate transaction that was being</p> <p>19 proposed?</p> <p>20 MR. SCHULTZ: Objection to form.</p> <p>21 A. I mean, it wasn't a meeting with minutes</p> <p>22 and like, let's write a conclusion. But I think</p> <p>23 that was among the reasons that we did not.</p> <p>24 BY MR. RHYS DAVIES:</p> <p>25 Q. And that was a view that you and your</p>	<p>1 I. Wagner</p> <p>2 Bear Stearns do with ACA as the collateral manager?</p> <p>3 A. Probably five or six, I think.</p> <p>4 Something like that.</p> <p>5 Q. And those transactions were done by your</p> <p>6 team at Bear Stearns?</p> <p>7 A. Yes.</p> <p>8 Q. Did Bear Stearns do other CDO</p> <p>9 transactions in which ACA was not the collateral</p> <p>10 manager but provided financial guarantee insurance?</p> <p>11 A. I don't think so, no.</p> <p>12 Q. In addition to the five or six CDO or</p> <p>13 CLO transactions that Bear Stearns did with ACA as</p> <p>14 the collateral manager, were there other</p> <p>15 transactions that were worked on but that did not</p> <p>16 ultimately close?</p> <p>17 A. With ACA?</p> <p>18 Q. Yes.</p> <p>19 A. I'm not aware of any.</p> <p>20 Q. Do you know who David King is?</p> <p>21 A. Yes, I do.</p> <p>22 Q. He was a senior person at Bear Stearns?</p> <p>23 A. He worked for a private equity investing</p> <p>24 ARM. I think it was overall part of Bear Stearns,</p> <p>25 but it was very much a separate unit.</p>
Page 71	Page 73
<p>1 I. Wagner</p> <p>2 colleagues formed based on the meeting that you had</p> <p>3 with the Paulson representatives?</p> <p>4 A. I think it was based on responding to</p> <p>5 their inquiry, yes.</p> <p>6 Q. Did you notify any regulator after the</p> <p>7 meeting that Paulson was proposing to do a</p> <p>8 transaction that you thought was inappropriate?</p> <p>9 MR. SCHULTZ: Objection to form.</p> <p>10 A. I did not.</p> <p>11 BY MR. RHYS DAVIES:</p> <p>12 Q. Did you notify Bear Stearns' legal or</p> <p>13 compliance department that Paulson had proposed</p> <p>14 doing a transaction that you considered to be</p> <p>15 inappropriate?</p> <p>16 MR. SCHULTZ: Objection to form.</p> <p>17 A. I did not.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. When you gave your interview to the</p> <p>20 FCIC, were you represented by counsel?</p> <p>21 A. I was not.</p> <p>22 Q. Do you have a transcript of your</p> <p>23 interview with the FCIC?</p> <p>24 A. I do not.</p> <p>25 Q. How many CDO or CLO transactions did</p>	<p>1 I. Wagner</p> <p>2 Q. It was separate from your business area?</p> <p>3 A. And fixed income generally, I think.</p> <p>4 Q. But it was part of Bear Stearns?</p> <p>5 A. I believe it was.</p> <p>6 Q. Do you recall that Mr. King sat on the</p> <p>7 board of ACA?</p> <p>8 A. I knew that, yes.</p> <p>9 Q. Do you know why a Bear Stearns employee</p> <p>10 was sitting on the board of ACA?</p> <p>11 A. Well, I think it was -- the private</p> <p>12 equity money that he managed invested in ACA.</p> <p>13 Q. Bear Stearns was ACA's largest</p> <p>14 shareholder; isn't that correct?</p> <p>15 MR. SCHULTZ: Objection to form and</p> <p>16 foundation.</p> <p>17 A. I don't know technically who was the</p> <p>18 shareholder. I believe it was within these funds.</p> <p>19 And then who were the investors in the funds, I</p> <p>20 don't know.</p> <p>21 But I believe that investment entity</p> <p>22 made a significant investment in ACA.</p> <p>23 BY MR. RHYS DAVIES:</p> <p>24 Q. Do you recall the size of the</p> <p>25 investment?</p>

19 (Pages 70 to 73)

Ira Wagner

February 5, 2013

New York, NY

Page 74	Page 76
<p>1 I. Wagner</p> <p>2 A. I think it was -- it may have been 170</p> <p>3 million. I think it was more than \$100 million, I</p> <p>4 believe.</p> <p>5 Q. Did Bear Stearns introduce investors to</p> <p>6 ACA?</p> <p>7 A. What type of investors or for what</p> <p>8 purpose? Maybe you could be more specific.</p> <p>9 Q. Let me show you a document.</p> <p>10 A. Okay.</p> <p>11 (Wagner Exhibit 8, E-mail dated 1/15/07</p> <p>12 bearing Production No. SEC 6443286, was</p> <p>13 marked for identification)</p> <p>14 BY MR. RHYS DAVIES:</p> <p>15 Q. Exhibit 8 is a one-page document with a</p> <p>16 Bates stamp SEC 06443286.</p> <p>17 A. Yes.</p> <p>18 Q. Mr. Wagner, this is an e-mail from a Kim</p> <p>19 Leslie Shafer to Laura Schwartz and others, copied</p> <p>20 to, among others, you; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Who is Kim Leslie Shafer?</p> <p>23 A. She was a banker in the CDO group that</p> <p>24 reported to me.</p> <p>25 Q. In the first e-mail in this string, the</p>	<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Exhibit 9 is an e-mail and attachment</p> <p>4 that begins with the Bates number SEC 06459332 and</p> <p>5 ends with 345.</p> <p>6 Mr. Wagner, directing your attention to</p> <p>7 the attachment that begins on the page that has the</p> <p>8 number 06459333 at the bottom, do you see that this</p> <p>9 is a CDO Manager Questionnaire, ACA Capital?</p> <p>10 A. Yes.</p> <p>11 Q. To Katonah Debt Advisors?</p> <p>12 A. Okay.</p> <p>13 Q. Dated October 26, 2006?</p> <p>14 A. Okay.</p> <p>15 Q. Have you seen this document before?</p> <p>16 A. This, I have not, no.</p> <p>17 Q. Directing your attention to the top of</p> <p>18 page 11 where the questionnaire says, "Please</p> <p>19 provide references (investors, bankers, dealers,</p> <p>20 investments)."</p> <p>21 Do you see that the first name listed</p> <p>22 there is Ira Wagner, Bear Stearns?</p> <p>23 A. Yes.</p> <p>24 Q. Does this refresh your recollection that</p> <p>25 you agreed with Laura Schwartz that you would serve</p>
Page 75	Page 77
<p>1 I. Wagner</p> <p>2 one at 1635 on January 15th, do you see that Laura</p> <p>3 Schwartz writes to Kim Leslie Shafer: "We are</p> <p>4 seeing a proposal from another investment bank on a</p> <p>5 LCDS CDO. Did you see the one Airlie did with</p> <p>6 Lehman? Airlie is any investor you introduced to</p> <p>7 us, I believe."</p> <p>8 Do you know whether Bear Stearns</p> <p>9 introduced Airlie to ACA?</p> <p>10 A. No. I don't know one way or the other.</p> <p>11 Q. Do you know whether Bear Stearns</p> <p>12 introduced other investors to ACA?</p> <p>13 A. I don't know of any specific</p> <p>14 investors we would have introduced to ACA. No,</p> <p>15 I don't.</p> <p>16 Q. Mr. Wagner, do you remember agreeing</p> <p>17 with Laura Schwartz in late 2006 or early 2007 that</p> <p>18 you personally would serve as a reference for ACA</p> <p>19 in connection with ACA's efforts to market its CDO</p> <p>20 management business?</p> <p>21 A. I don't remember doing that.</p> <p>22 (Wagner Exhibit 9, E-mail dated 1/19/07</p> <p>23 with attachment bearing Production Nos. SEC</p> <p>24 06459332 through 6459345, was marked for</p> <p>25 identification)</p>	<p>1 I. Wagner</p> <p>2 as a reference for ACA in marketing its CDO</p> <p>3 management business?</p> <p>4 MR. SCHULTZ: Objection. Foundation.</p> <p>5 A. I don't have any recollection of being</p> <p>6 asked about this, no, or serving as the reference.</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. Do you recall serving as a reference for</p> <p>9 ACA in connection with any other marketing of its</p> <p>10 CDO management business?</p> <p>11 A. No.</p> <p>12 Q. Do you recall speaking with this entity</p> <p>13 Katonah Debt Advisors about ACA?</p> <p>14 A. No. No, I don't.</p> <p>15 Q. Are you sure that you did not serve as a</p> <p>16 reference for ACA in connection with this</p> <p>17 submission to Katonah? Or is it that you just</p> <p>18 don't recollect?</p> <p>19 MR. SCHULTZ: Objection to form and</p> <p>20 foundation.</p> <p>21 A. Are you asking if I was ever contacted</p> <p>22 or if I knew that I was going to be listed? Could</p> <p>23 you --</p> <p>24 BY MR. RHYS DAVIES:</p> <p>25 Q. Well, let's take that first.</p>

20 (Pages 74 to 77)

Ira Wagner

February 5, 2013

New York, NY

Page 78	Page 80
<p>1 I. Wagner</p> <p>2 Did you know that you were going to be</p> <p>3 listed as a reference?</p> <p>4 A. No, I did not know that.</p> <p>5 Q. So is it your testimony that you were</p> <p>6 listed in this document without your approval?</p> <p>7 MR. SCHULTZ: Objection. Foundation.</p> <p>8 Form.</p> <p>9 A. I just don't remember her asking me to</p> <p>10 serve as a reference. So that's what I can tell</p> <p>11 you.</p> <p>12 BY MR. RHYS DAVIES:</p> <p>13 Q. Did you attend the Global ABS Conference</p> <p>14 in Barcelona in June of 2007?</p> <p>15 A. In June of 2007?</p> <p>16 Q. Yes.</p> <p>17 A. I don't think I went in June of 2007.</p> <p>18 I'm not sure, but I don't think so. I had gone to</p> <p>19 Barcelona at some point, but I just don't remember</p> <p>20 if I went to that conference. I might have.</p> <p>21 Q. You attended other Global ABS</p> <p>22 conferences in Barcelona?</p> <p>23 A. Yes.</p> <p>24 Q. What is the Global ABS Conference?</p> <p>25 A. It's a conference -- it is quite well</p>	<p>1 I. Wagner</p> <p>2 Jisook Choi.</p> <p>3 A. Yes.</p> <p>4 Q. Who is Jisook Choi?</p> <p>5 A. She is another person that was on the</p> <p>6 banking team at Bear Stearns.</p> <p>7 Q. Let me ask you to just review that</p> <p>8 e-mail, please.</p> <p>9 A. Okay.</p> <p>10 Q. Does this refresh your recollection that</p> <p>11 Bear Stearns introduced ACA to potential clients?</p> <p>12 MR. SCHULTZ: Objection. Form.</p> <p>13 Foundation.</p> <p>14 A. Yes. We had meetings with investors for</p> <p>15 ACA transactions, yes.</p> <p>16 BY MR. RHYS DAVIES:</p> <p>17 Q. Does this appear to you to relate to</p> <p>18 meetings with investors for ACA transactions?</p> <p>19 A. I think it's -- from looking at what's</p> <p>20 here, I think it's for a specific transaction that</p> <p>21 was being marketed at that time.</p> <p>22 Q. Do you know what the transaction was?</p> <p>23 A. I'm looking at -- I don't know, no. I</p> <p>24 guess looking at the top -- well, they mention some</p> <p>25 management sections from two different ACA deals,</p>
Page 79	Page 81
<p>1 I. Wagner</p> <p>2 attended. It talks about all different types of</p> <p>3 securities in the ABS and structured finance</p> <p>4 markets. It would be attended by bankers, by</p> <p>5 investors, by collateral managers, by attorneys</p> <p>6 that work in the field. It's a very substantial</p> <p>7 get-together.</p> <p>8 There are scheduled presentations about</p> <p>9 different topics, and there are frequent</p> <p>10 opportunities to converse with investors and</p> <p>11 potential clients and participants in the market.</p> <p>12 MR. RHYS DAVIES: Let's mark the next</p> <p>13 exhibit.</p> <p>14 (Wagner Exhibit 10, E-mail string</p> <p>15 beginning with e-mail dated 6/1/07 with</p> <p>16 attachment bearing Production Nos. SEC</p> <p>17 07844825 through 07844916, was marked for</p> <p>18 identification)</p> <p>19 BY MR. RHYS DAVIES:</p> <p>20 Q. Exhibit 10 is a multipage document</p> <p>21 beginning on SEC 07844825 and ending in 916.</p> <p>22 A. Okay.</p> <p>23 Q. Directing your attention to the e-mail</p> <p>24 at the bottom of the first page, the e-mail from</p> <p>25 Kim Leslie Shafer to Laura Schwartz, copied to</p>	<p>1 I. Wagner</p> <p>2 so I don't know if we were -- I don't remember the</p> <p>3 timing of whether we were marketing those at the</p> <p>4 time or it was just to discuss ACA as a manager.</p> <p>5 (Wagner Exhibit 11, E-mail string</p> <p>6 beginning with e-mail dated 6/6/07 with</p> <p>7 attachment bearing Production Nos. SEC</p> <p>8 07855367 through 07855424, was marked for</p> <p>9 identification)</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. Exhibit 11 is a multipage document</p> <p>12 beginning SEC 07855367 through 5424.</p> <p>13 A. Okay.</p> <p>14 Q. I'm going to ask you to take a</p> <p>15 moment to familiarize yourself with the</p> <p>16 document generally.</p> <p>17 A. Okay.</p> <p>18 Q. You will see that the top e-mail has in</p> <p>19 the subject line CLO Platform Marketing Book?</p> <p>20 A. Yes.</p> <p>21 Q. Who is Vladimir Guran?</p> <p>22 A. He is another person in the banking</p> <p>23 group.</p> <p>24 Q. At Bear Stearns?</p> <p>25 A. Yes.</p>

21 (Pages 78 to 81)

Ira Wagner

February 5, 2013

New York, NY

Page 82	Page 84
<p>1 I. Wagner</p> <p>2 Q. Let me ask you to take a look at the</p> <p>3 attachment.</p> <p>4 A. Okay.</p> <p>5 Q. Which is headed "Preliminary</p> <p>6 Confidential Information Memorandum on ACA</p> <p>7 Management, LLC."</p> <p>8 A. Okay.</p> <p>9 Q. By the way, did Vladimir Guran report to</p> <p>10 you?</p> <p>11 A. Yes.</p> <p>12 Q. You will see here on the front page of</p> <p>13 this preliminary confidential information</p> <p>14 memorandum it has the Bear Stearns and the ACA</p> <p>15 logos side by side?</p> <p>16 A. Yes.</p> <p>17 Q. Is this a joint marketing book for Bear</p> <p>18 Stearns and ACA?</p> <p>19 MR. SCHULTZ: Objection. Foundation.</p> <p>20 A. Well, I think this is about ACA. I</p> <p>21 think this, as I look at this, is a general</p> <p>22 presentation on ACA as a CDO manager. And that's</p> <p>23 what this is about. It looks like we were hosting</p> <p>24 a series of meetings for them. And so our name is</p> <p>25 on this as well.</p>	<p>1 I. Wagner</p> <p>2 the people did.</p> <p>3 Q. Which of the people on this list</p> <p>4 reported to you?</p> <p>5 A. The people under my name in New York.</p> <p>6 Not every name in London, but six or</p> <p>7 seven of those.</p> <p>8 Not the trading or syndicate people, the</p> <p>9 people listed under CDO trading and syndicate.</p> <p>10 The CDO group analytics as a group</p> <p>11 reported to a management called FAST. But they</p> <p>12 reported to me for the purpose of doing the CDOs.</p> <p>13 And then the CDO product management team reported</p> <p>14 to me. That was the new issue distribution we</p> <p>15 talked about earlier.</p> <p>16 Q. Then directing you to page 7 of this</p> <p>17 presentation, you will see there's a heading,</p> <p>18 Senior Management Team of ACA Capital Holdings,</p> <p>19 Inc.</p> <p>20 A. Yes.</p> <p>21 Q. And these are the senior people at ACA?</p> <p>22 A. I believe so, yes. I mean, I know that</p> <p>23 Alan Roseman was the CEO.</p> <p>24 Q. And at the bottom of the list is Laura</p> <p>25 Schwartz?</p>
Page 83	Page 85
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. From the e-mail on the front page, it</p> <p>4 looks as though Bear Stearns prepared this</p> <p>5 presentation; is that correct?</p> <p>6 MR. SCHULTZ: Objection. Foundation.</p> <p>7 A. I mean, in terms of prepared, I think</p> <p>8 from a word processing PowerPoint perspective, I</p> <p>9 imagine that we did this. I don't think we put</p> <p>10 together the ACA material though.</p> <p>11 BY MR. RHYS DAVIES:</p> <p>12 Q. You didn't put together the substance of</p> <p>13 the material?</p> <p>14 A. Of the ACA material. I think that came</p> <p>15 from ACA.</p> <p>16 Q. Referring you to page 3 of the</p> <p>17 attachment, which has a heading Bear Stearns CDO</p> <p>18 Team.</p> <p>19 A. Okay.</p> <p>20 Q. Do you see there is a list of people.</p> <p>21 You are the second listed name, correct?</p> <p>22 A. Yes.</p> <p>23 Q. These are the people who reported to you</p> <p>24 in your CDO group?</p> <p>25 A. Not everybody on this list, but many of</p>	<p>1 I. Wagner</p> <p>2 A. Correct.</p> <p>3 Q. Do you know whether this book was used</p> <p>4 to jointly market Bear Stearns and ACA at the</p> <p>5 Barcelona ABS Conference?</p> <p>6 MR. SCHULTZ: Objection. Foundation.</p> <p>7 A. I don't think it was, quote, jointly</p> <p>8 marketing Bear Stearns and ACA. I think in general</p> <p>9 again at these conferences we would use it as an</p> <p>10 opportunity to introduce managers to investors.</p> <p>11 So it would be marketing the manager's</p> <p>12 capabilities to investors. If there wasn't a</p> <p>13 specific deal that was being marketed, we would try</p> <p>14 and use those opportunities where there were a lot</p> <p>15 of investors in one place, and the managers were</p> <p>16 attending, to set up a series of meetings for</p> <p>17 potential future transactions.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. So Bear Stearns used this book to market</p> <p>20 ACA's capabilities to investors?</p> <p>21 A. To talk about ACA's management</p> <p>22 capabilities with investors, yes.</p> <p>23 Q. Did you work with Laura Schwartz while</p> <p>24 you were at Bear Stearns?</p> <p>25 A. I had some opportunity to work with her,</p>

22 (Pages 82 to 85)

Ira Wagner

February 5, 2013

New York, NY

Page 86	Page 88
<p>1 I. Wagner</p> <p>2 yes.</p> <p>3 Q. When was the last time you spoke with</p> <p>4 Laura Schwartz?</p> <p>5 A. Either at the very beginning of 2008</p> <p>6 or in 2007. I haven't seen or spoken with her</p> <p>7 since.</p> <p>8 Q. Do you know Alan Roseman?</p> <p>9 A. I had met him a couple of times.</p> <p>10 Q. When was the last time you spoke with</p> <p>11 Alan Roseman?</p> <p>12 A. Maybe in 2007, but not after that.</p> <p>13 Q. Have you spoken with any current or</p> <p>14 former ACA employees about this case?</p> <p>15 A. No.</p> <p>16 Q. Do you recall attending a dinner in</p> <p>17 January 2007 with ACA to celebrate the closing of a</p> <p>18 CDO?</p> <p>19 A. We would have dinners for closings. I</p> <p>20 don't recall that specific one. If there was one,</p> <p>21 I likely attended.</p> <p>22 (Wagner Exhibit 12, E-mail dated 1/9/07</p> <p>23 with attachment bearing Production Nos. SEC</p> <p>24 1062119 through 1062120, was marked for</p> <p>25 identification)</p>	<p>1 I. Wagner</p> <p>2 attending with ACA?</p> <p>3 A. It was at a restaurant called Blue Hill</p> <p>4 in Greenwich Village, I think.</p> <p>5 Q. By the way, ACA ABS 2006-2, that was a</p> <p>6 CDO that your group put together at Bear Stearns?</p> <p>7 A. We were the bankers, yes.</p> <p>8 Q. And looking at the e-mail on the first</p> <p>9 page of this document -- first of all, the From</p> <p>10 line, who is Kent Johnson?</p> <p>11 A. He is another person in the banking</p> <p>12 group at Bear Stearns.</p> <p>13 Q. Someone who reported to you?</p> <p>14 A. Yes.</p> <p>15 Q. And then in the To line, do you</p> <p>16 recognize these people as ACA employees?</p> <p>17 A. Sarah Dunn and Barbara Johnston, I don't</p> <p>18 know. Keith Gorman, yes. Lucas Westreich, yes.</p> <p>19 Ava Regal, Alan Roseman, Bill Tomljanovic, Dennis</p> <p>20 Kraft, Tracy. Some of these names, I don't know.</p> <p>21 Q. You recognize Laura Schwartz as senior</p> <p>22 managing director responsible for ACA's asset</p> <p>23 management business?</p> <p>24 A. CDO management business, yes. She ran</p> <p>25 the CDO management business.</p>
Page 87	Page 89
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Exhibit 12 is a two-page document</p> <p>4 beginning with Bates numbers SEC 001062119 and</p> <p>5 ending in 120.</p> <p>6 A. Okay.</p> <p>7 Q. Does this refresh your recollection that</p> <p>8 in January 2007 you went to a dinner at Del Posto</p> <p>9 with ACA to celebrate the closing of a CDO called</p> <p>10 ACA ABS 2006-2?</p> <p>11 MR. SCHULTZ: Objection. Foundation.</p> <p>12 A. You know, I've been to Del Posto. And</p> <p>13 I'm trying to picture being at an ACA dinner at Del</p> <p>14 Posto, and it's not -- I don't recollect. I can</p> <p>15 picture a dinner that I had with ACA at another</p> <p>16 restaurant. I'm not sure if I went to this or not.</p> <p>17 I'm sorry.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Where is Del Posto?</p> <p>20 A. The address is here. But it's in</p> <p>21 Chelsea or the Meatpacking District. It's 10th</p> <p>22 Avenue and 15th Street.</p> <p>23 Q. So it's a very fancy restaurant?</p> <p>24 A. It's fancy, yes.</p> <p>25 Q. Which is the meal that you do remember</p>	<p>1 I. Wagner</p> <p>2 Q. And you recognize Keith Gorman, his</p> <p>3 name?</p> <p>4 A. Yes.</p> <p>5 Q. He was a director and portfolio manager,</p> <p>6 is that right?</p> <p>7 A. I know he was involved in</p> <p>8 portfolio management. I don't know his title</p> <p>9 specifically.</p> <p>10 Q. Can you recall Lucas Westreich's role at</p> <p>11 ACA?</p> <p>12 A. Some of these names are people I just</p> <p>13 met. I don't remember the specific roles of them.</p> <p>14 But I remember meeting them.</p> <p>15 Q. Alan Roseman you recall was the</p> <p>16 president and chief executive officer?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recall Dennis Kraft?</p> <p>19 A. He was in portfolio management or</p> <p>20 credit, I think, sort of similarly involved in the</p> <p>21 analysis.</p> <p>22 Q. And the other dinner you recall</p> <p>23 attending at Blue Hill, do you recall, was that to</p> <p>24 celebrate the closing of a transaction?</p> <p>25 A. Yes, I think it was.</p>

23 (Pages 86 to 89)

Ira Wagner

February 5, 2013

New York, NY

Page 90	Page 92
<p>1 I. Wagner</p> <p>2 Q. Which transaction was that?</p> <p>3 A. I don't remember if it was an ABS deal</p> <p>4 or a CLO. I'm just not sure.</p> <p>5 Q. Who do you recall attended from ACA that</p> <p>6 event?</p> <p>7 A. I can remember Laura. I can remember</p> <p>8 Bill Tomljanovic. I don't remember too many of the</p> <p>9 other people.</p> <p>10 Q. Who attended from Bear Stearns?</p> <p>11 A. I did. I think Kim Shafer. I don't</p> <p>12 remember after that.</p> <p>13 Q. Did Kim Shafer report to you?</p> <p>14 A. Yes.</p> <p>15 Q. Let me ask you some questions about the</p> <p>16 ACA ABS CDO 2006-2 transaction whose closing dinner</p> <p>17 was celebrated at Del Posto.</p> <p>18 A. Okay.</p> <p>19 MR. RHYS DAVIES: Let's mark another</p> <p>20 exhibit.</p> <p>21 (Wagner Exhibit 13, E-mail string</p> <p>22 beginning with e-mail dated 1/23/07 with</p> <p>23 attachment bearing Production Nos. SEC</p> <p>24 1066745 through 1067322, was marked for</p> <p>25 identification)</p>	<p>1 I. Wagner</p> <p>2 Management' or the 'Collateral Manager' will</p> <p>3 perform certain administrative and management</p> <p>4 services for the issuer, including the selection of</p> <p>5 the collateral debt securities as defined herein"?</p> <p>6 A. Yes.</p> <p>7 Q. And then let me ask you to turn next to</p> <p>8 page 164 of the offering circular.</p> <p>9 A. Okay.</p> <p>10 Q. This is a section under the heading The</p> <p>11 Collateral Manager, General.</p> <p>12 A. Yes.</p> <p>13 Q. You will see that about five or six</p> <p>14 lines down into this text it says, "The collateral</p> <p>15 manager" -- which we saw earlier defined as ACA,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. -- "will select the portfolio of</p> <p>19 collateral debt securities and eligible</p> <p>20 investments."</p> <p>21 And then do you see a few more lines</p> <p>22 down it says, "Neither the initial purchaser nor</p> <p>23 any of its affiliates will select any of the</p> <p>24 collateral debt securities or eligible investments</p> <p>25 to be acquired by the issuer"?</p>
Page 91	Page 93
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Wagner Exhibit 13 is a document that</p> <p>4 begins with the Bates number SEC 001066745. We</p> <p>5 have omitted one of the two attachments, the</p> <p>6 indenture, but we have included the offering</p> <p>7 circular. And the Bates numbers of that document</p> <p>8 are SEC 001067039 through 321.</p> <p>9 Mr. Wagner, directing your attention to</p> <p>10 the page which is the first page of the offering</p> <p>11 circular. It's on SEC 001067039.</p> <p>12 A. Okay.</p> <p>13 Q. Do you recognize this as the offering</p> <p>14 circular for ACA ABS 2006-2?</p> <p>15 MR. SCHULTZ: Objection. Foundation.</p> <p>16 Form.</p> <p>17 A. I mean, it looks like it, yes.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Let me ask you to turn to the page</p> <p>20 ending in SEC 001067041. It's a couple of pages</p> <p>21 after where you are right now.</p> <p>22 A. All right.</p> <p>23 Q. Do you see at the top of that page, it's</p> <p>24 page (ii): "ACA Management, LLC, a Delaware</p> <p>25 limited liability company," defined as, "ACA</p>	<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection to form and</p> <p>3 foundation.</p> <p>4 A. Okay.</p> <p>5 BY MR. RHYS DAVIES:</p> <p>6 Q. And the initial purchaser in this deal</p> <p>7 was Bear Stearns; is that correct?</p> <p>8 MR. SCHULTZ: Objection. Foundation.</p> <p>9 A. I think so. It would be stated on the</p> <p>10 cover. But I believe so.</p> <p>11 BY MR. RHYS DAVIES:</p> <p>12 Q. On the cover page of the offering</p> <p>13 circular towards the bottom it says, "The</p> <p>14 securities are offered by the issuers through Bear</p> <p>15 Stearns and Co., Inc.," defined as "the 'Initial</p> <p>16 Purchaser'."</p> <p>17 A. Yes. So they are the initial purchaser.</p> <p>18 Q. Do you know why it was thought necessary</p> <p>19 to make a disclosure that Bear Stearns was not</p> <p>20 going to be selecting the portfolio?</p> <p>21 MR. SCHULTZ: Objection to form.</p> <p>22 A. I don't recall specific discussion of</p> <p>23 this.</p> <p>24 BY MR. RHYS DAVIES:</p> <p>25 Q. In light of the disclosure that the</p>

24 (Pages 90 to 93)

Ira Wagner

February 5, 2013

New York, NY

Page 94	Page 96
<p>1 I. Wagner</p> <p>2 collateral manager will select the portfolio, do</p> <p>3 you think it was necessary to disclose that Bear</p> <p>4 Stearns was not going to be selecting the</p> <p>5 portfolio?</p> <p>6 MR. SCHULTZ: Objection to form.</p> <p>7 A. I can say in general investors were</p> <p>8 interested -- would be interested in the sourcing</p> <p>9 of the portfolio and how it was selected.</p> <p>10 But, again, I don't have a specific</p> <p>11 recollection of placing this language here or what</p> <p>12 was around it.</p> <p>13 BY MR. RHYS DAVIES:</p> <p>14 Q. Do you know who did place this language</p> <p>15 here?</p> <p>16 A. Specifically, no.</p> <p>17 Q. At Bear Stearns, who made decisions</p> <p>18 about what language went into offering documents?</p> <p>19 MR. SCHULTZ: Objection. Form.</p> <p>20 Foundation.</p> <p>21 A. As a general matter, we would work with</p> <p>22 the counsel for the transaction to have the</p> <p>23 offering circular put together. The bankers on</p> <p>24 each transaction would read it and comment on it.</p> <p>25 Some of these were developed prior to the specific</p>	<p>1 I. Wagner</p> <p>2 of New York. The case caption: CIFG Assurance</p> <p>3 North America, Inc. against JPMorgan Securities,</p> <p>4 LLC.</p> <p>5 A. Okay.</p> <p>6 Q. You haven't seen this complaint before?</p> <p>7 A. No.</p> <p>8 Q. Let me ask you if you would to read</p> <p>9 paragraph 1 to yourself.</p> <p>10 A. (Witness reading document).</p> <p>11 Okay.</p> <p>12 Q. You will see that it's alleged in this</p> <p>13 complaint that although the offering materials</p> <p>14 represented that ACA would be selecting the</p> <p>15 collateral in the interest of long investors, in</p> <p>16 fact ACA allowed Bear Stearns to pick the</p> <p>17 collateral.</p> <p>18 Do you see that allegation?</p> <p>19 MR. SCHULTZ: Objection to form and</p> <p>20 foundation.</p> <p>21 A. I see it.</p> <p>22 BY MR. RHYS DAVIES:</p> <p>23 Q. And you see the allegation that what in</p> <p>24 fact Bear Stearns selected was a portfolio of toxic</p> <p>25 RMBS that it wanted off its balance sheet?</p>
Page 95	Page 97
<p>1 I. Wagner</p> <p>2 transaction that you are looking at. And we tended</p> <p>3 to work with the same counsel, so we would have</p> <p>4 forms of our documents that would be starting</p> <p>5 points.</p> <p>6 BY MR. RHYS DAVIES:</p> <p>7 Q. This transaction was done by your team</p> <p>8 at Bear Stearns; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Are you aware that Bear Stearns or</p> <p>11 JPMorgan has been sued for fraud by a monoline</p> <p>12 insurer that provided a financial guarantee on this</p> <p>13 transaction?</p> <p>14 MR. SCHULTZ: Objection, foundation.</p> <p>15 A. On this transaction?</p> <p>16 BY MR. RHYS DAVIES:</p> <p>17 Q. Yes.</p> <p>18 A. I didn't know that.</p> <p>19 (Wagner Exhibit 14, CIFG Assurance North</p> <p>20 America, Inc. vs. J.P. Morgan Securities,</p> <p>21 LLC, Complaint, 46 pages, was marked for</p> <p>22 identification)</p> <p>23 BY MR. RHYS DAVIES:</p> <p>24 Q. Wagner Exhibit 14 is a copy of a</p> <p>25 complaint filed in the Supreme Court of the State</p>	<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection to form and</p> <p>3 foundation.</p> <p>4 A. I see the allegation, yes.</p> <p>5 BY MR. RHYS DAVIES:</p> <p>6 Q. You see the allegation also that Bear</p> <p>7 Stearns then shorted those assets in an attempt to</p> <p>8 further reduce its exposure to toxic RMBS?</p> <p>9 MR. SCHULTZ: Same objections.</p> <p>10 A. I don't see the last reference you are</p> <p>11 mentioning, I'm sorry.</p> <p>12 BY MR. RHYS DAVIES:</p> <p>13 Q. I'm looking at the first page of the</p> <p>14 complaint, four or five lines down.</p> <p>15 MR. SCHULTZ: Same objections.</p> <p>16 A. Maybe you could reread the question. I</p> <p>17 don't think that's what's here, but...</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Let me refer you to page 2.</p> <p>20 A. Okay.</p> <p>21 Q. The first full sentence, beginning on</p> <p>22 that page begins with the words: "In fact, as Bear</p> <p>23 Stearns was well aware, but CIFG was not, the</p> <p>24 collateral for these CDOs was selected not by ACA</p> <p>25 and Strategos but by Bear Stearns itself, which not</p>

25 (Pages 94 to 97)

Ira Wagner

February 5, 2013

New York, NY

<p style="text-align: right;">Page 98</p> <p>1 I. Wagner</p> <p>2 only stocked the CDOs with toxic RMBS but also</p> <p>3 profited from short positions it took against the</p> <p>4 CDOs portfolios."</p> <p>5 MR. SCHULTZ: Same objections.</p> <p>6 BY MR. RHYS DAVIES:</p> <p>7 Q. Do you think that the disclosure in the</p> <p>8 offering circular we looked at a moment ago was</p> <p>9 accurate?</p> <p>10 MR. SCHULTZ: Same objections.</p> <p>11 Relevance.</p> <p>12 A. I have no reason to think it wasn't</p> <p>13 accurate.</p> <p>14 BY MR. RHYS DAVIES:</p> <p>15 Q. Do you expect to be a fact witness in</p> <p>16 this litigation?</p> <p>17 A. I have never been contacted. I don't</p> <p>18 know.</p> <p>19 Q. Did Bear Stearns in fact participate in</p> <p>20 selection of the reference portfolio for this</p> <p>21 transaction?</p> <p>22 MR. SCHULTZ: Objection to form and</p> <p>23 foundation.</p> <p>24 A. I don't know how the portfolio was put</p> <p>25 together.</p>	<p style="text-align: right;">Page 100</p> <p>1 I. Wagner</p> <p>2 sufficient disclosure, no. I don't think so.</p> <p>3 Q. And that's your opinion even though the</p> <p>4 reference portfolio had to meet with ACA's</p> <p>5 approval?</p> <p>6 A. Well, I think you have several questions</p> <p>7 in there. But I think it was clear to the</p> <p>8 transaction team and Goldman that disclosure on ACA</p> <p>9 was material and important.</p> <p>10 So once you get to the point that the</p> <p>11 reference portfolio itself is not sufficient, and</p> <p>12 you go to that you need disclosure on the manager</p> <p>13 or the portfolio selection agent in this case</p> <p>14 because of their role in selecting, then you have</p> <p>15 left out a critical piece of information about how</p> <p>16 the portfolio was selected. You've only told half</p> <p>17 the story.</p> <p>18 Q. You say you think it was clear to the</p> <p>19 transaction team at Goldman that disclosure on ACA</p> <p>20 was material and important.</p> <p>21 What is the basis for that comment?</p> <p>22 A. That ACA's role was material and</p> <p>23 important.</p> <p>24 I think it's largely elaborated in the</p> <p>25 MCC memo that describes the transaction. I think</p>
<p style="text-align: right;">Page 99</p> <p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. You were the person who was supervising</p> <p>4 the team that put together this transaction; is</p> <p>5 that correct?</p> <p>6 A. The bankers, yes.</p> <p>7 Q. Let's go back to Exhibit 1, which is</p> <p>8 your opening report.</p> <p>9 You have opined that the disclosure in</p> <p>10 the Abacus 2007-AC1 transaction that ACA selected,</p> <p>11 the reference portfolio was misleading, correct?</p> <p>12 A. I believe I said that, yes. I mean, I</p> <p>13 would like to look at the specific place. But I</p> <p>14 think without -- with the omission of a discussion</p> <p>15 of Paulson, I think it would be misleading, yes.</p> <p>16 Q. And part of the reason for your opinion</p> <p>17 is that you think that ACA was not able to select</p> <p>18 names more broadly from the universe of RMBS</p> <p>19 transactions?</p> <p>20 A. Among -- that's among the reasons.</p> <p>21 Q. And you think that the disclosure was</p> <p>22 misleading even though the reference portfolio had</p> <p>23 to meet ACA's approval ultimately?</p> <p>24 A. It had to meet ACA. But it also had to</p> <p>25 meet Paulson. So I think the list itself is not</p>	<p style="text-align: right;">Page 101</p> <p>1 I. Wagner</p> <p>2 throughout the e-mail and, you know, some of what</p> <p>3 we looked at, it was clear that they needed a</p> <p>4 manager. They then talked about in the MCC memo</p> <p>5 how ACA would enhance the ability to market the</p> <p>6 transaction.</p> <p>7 And if the reference portfolio itself</p> <p>8 was sufficient, yet a lot of material was included</p> <p>9 and, in fact, ACA was highlighted throughout that</p> <p>10 material.</p> <p>11 Q. So this is a view you are deriving from</p> <p>12 the e-mails and the mortgage capital committee</p> <p>13 memo?</p> <p>14 A. From virtually every action in the</p> <p>15 transaction. I think it's the e-mails; the MCC</p> <p>16 memo; dialogue about that they needed a manager to</p> <p>17 put it together; that IKB wouldn't purchase a</p> <p>18 transaction without a manager. I mean, it was</p> <p>19 almost in every part of this transaction that a</p> <p>20 manager was necessary and that a static pool</p> <p>21 without a manager would not have been -- a</p> <p>22 transaction on that basis would not have been</p> <p>23 successful.</p> <p>24 Q. This is a view you are deriving from</p> <p>25 your review of the evidence in this case; is that</p>

26 (Pages 98 to 101)

Ira Wagner

February 5, 2013

New York, NY

Page 102	Page 104
<p>1 I. Wagner</p> <p>2 right?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. I want to ask you some questions about</p> <p>5 ACA CLO 2007-2.</p> <p>6 Do you recall that transaction?</p> <p>7 A. I know we did it. I don't remember a</p> <p>8 lot of detail about it.</p> <p>9 MR. SCHULTZ: Before you switch to that,</p> <p>10 could we just take a quick break?</p> <p>11 MR. RHYS DAVIES: Certainly.</p> <p>12 MR. SCHULTZ: Thanks.</p> <p>13 THE VIDEOGRAPHER: This concludes tape</p> <p>14 number two. We are going off the record at</p> <p>15 11:16 a.m.</p> <p>16 (Recess)</p> <p>17 THE VIDEOGRAPHER: This marks the start</p> <p>18 of tape number three. We are back on the</p> <p>19 record at 11:25 a.m.</p> <p>20 BY MR. RHYS DAVIES:</p> <p>21 Q. Before we broke, I had been asking you</p> <p>22 about the opinion in paragraph 50 of your opening</p> <p>23 report that the disclosure that ACA selected the</p> <p>24 reference portfolio was misleading, even though all</p> <p>25 the names ultimately had to meet with ACA's</p>	<p>1 I. Wagner</p> <p>2 A. Say what?</p> <p>3 Q. That this was a transaction that was</p> <p>4 done by Bear Stearns, by a group working under your</p> <p>5 supervision.</p> <p>6 A. There was no reason one way or the</p> <p>7 other, no.</p> <p>8 Q. In fact, the bank that provided the seed</p> <p>9 portfolio to ACA was Bear Stearns; is that correct?</p> <p>10 A. From reading this -- I mean, I recall</p> <p>11 that we would have as a general matter in CLOs, you</p> <p>12 know, had portfolios available for people, so</p> <p>13 that's possible. I really just don't have specific</p> <p>14 recollection of this transaction, of all of the</p> <p>15 components.</p> <p>16 (Wagner Exhibit 15, E-mail dated 3/5/07</p> <p>17 with attachment bearing Production Nos. SEC</p> <p>18 7076055 through 7076070, was marked for</p> <p>19 identification)</p> <p>20 MR. SCHULTZ: Is this number 15?</p> <p>21 MR. RHYS DAVIES: Yes.</p> <p>22 BY MR. RHYS DAVIES:</p> <p>23 Q. Wagner Exhibit 15 is a document</p> <p>24 beginning with the Bates stamp SEC 07076055</p> <p>25 continuing through 70.</p>
Page 103	Page 105
<p>1 I. Wagner</p> <p>2 approval.</p> <p>3 Do you recall that testimony?</p> <p>4 A. Yes. Although I don't think I say that</p> <p>5 in paragraph 50. But, yes, I recall discussing it.</p> <p>6 Q. I would like to ask you some questions</p> <p>7 about ACA CLO 2007-1.</p> <p>8 A. Okay.</p> <p>9 Q. That's a transaction that you discuss in</p> <p>10 your rebuttal report at paragraph 27. So let's</p> <p>11 take a look at that.</p> <p>12 A. Okay.</p> <p>13 Q. Yes. I misspoke. The transaction name</p> <p>14 is actually ACA CLO 2007-2.</p> <p>15 A. Okay.</p> <p>16 Q. Now, you argue in your rebuttal report</p> <p>17 that this transaction was different from Abacus,</p> <p>18 correct?</p> <p>19 A. I think there are differences, yes.</p> <p>20 Q. Do you recall that ACA CLO 2007-2 was a</p> <p>21 transaction done by your group at Bear Stearns?</p> <p>22 A. I mean, it's on a deal list. I mean, I</p> <p>23 recall that we did a CLO for ACA, yes.</p> <p>24 Q. Was there some reason that you didn't</p> <p>25 say that in your rebuttal report?</p>	<p>1 I. Wagner</p> <p>2 A. Okay.</p> <p>3 Q. You will see this is, on the front page,</p> <p>4 an e-mail from Kim Shafer -- who reported to you,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. To the three people at ACA?</p> <p>8 A. Yes.</p> <p>9 Q. Including Laura Schwartz?</p> <p>10 A. (Nodding affirmatively).</p> <p>11 Q. And this appears to be, would you agree,</p> <p>12 a draft engagement letter for the ACA CLO 2007-2</p> <p>13 transaction?</p> <p>14 MR. SCHULTZ: Objection to form.</p> <p>15 A. Yes. It seems to be.</p> <p>16 BY MR. RHYS DAVIES:</p> <p>17 Q. Let me ask you to turn to page 2 of this</p> <p>18 draft engagement letter.</p> <p>19 A. The second page of the letter?</p> <p>20 Q. Yes.</p> <p>21 A. Okay.</p> <p>22 Q. The paragraph (b) which begins with the</p> <p>23 words, "Bear Stearns' role shall include...."</p> <p>24 A. Okay.</p> <p>25 Q. I'm going to ask you to look at part (x)</p>

27 (Pages 102 to 105)

Ira Wagner

February 5, 2013

New York, NY

Page 106	Page 108
<p>1 I. Wagner</p> <p>2 of that paragraph, which is four lines from the</p> <p>3 bottom of the paragraph.</p> <p>4 A. Okay.</p> <p>5 Q. It says, "Bear Stearns' role shall</p> <p>6 include: 'Providing a portfolio in an amount equal</p> <p>7 to 50 percent of the original collateral, which</p> <p>8 subject to ACA's approval, shall form part of the</p> <p>9 original collateral, to speed accumulation</p> <p>10 thereof."</p> <p>11 A. Okay.</p> <p>12 Q. You reviewed Laura Schwartz' testimony</p> <p>13 in connection with preparing your opinions; is that</p> <p>14 correct?</p> <p>15 A. I did. I read her deposition and the</p> <p>16 investigative testimony.</p> <p>17 Q. Do you recall Ms. Schwartz being asked</p> <p>18 about this transaction and specifically about this</p> <p>19 document?</p> <p>20 A. About this engagement letter?</p> <p>21 Q. Yes.</p> <p>22 A. I don't recall that specifically.</p> <p>23 Q. You don't recall that Ms. Schwartz was</p> <p>24 asked: "And would you say that the portfolio was</p> <p>25 selected by ACA"; and she responded "Yes"?</p>	<p>1 I. Wagner</p> <p>2 Stearns' coming to us with a seed portfolio of \$200</p> <p>3 million."</p> <p>4 A. Okay.</p> <p>5 Q. "Each credit and the transfer prices</p> <p>6 will be approved by ACA."</p> <p>7 A. Okay.</p> <p>8 Q. And do you recall reading Laura</p> <p>9 Schwartz' testimony at her deposition in this</p> <p>10 matter where she testified that the portfolio was</p> <p>11 selected by ACA because ACA had vetted and approved</p> <p>12 the credits?</p> <p>13 MR. SCHULTZ: Objection. Foundation.</p> <p>14 A. I just -- I mean, if she said that and I</p> <p>15 could see it, fine. I mean, if that's what she</p> <p>16 said. I just don't remember her specifically on</p> <p>17 this point.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. So if an investor in this transaction</p> <p>20 was told that the portfolio was selected by ACA,</p> <p>21 would that be a correct statement in your opinion?</p> <p>22 A. As far as I can understand from what I</p> <p>23 have seen, I would say yes.</p> <p>24 Q. And that's true even though the seed</p> <p>25 portfolio was provided by Bear Stearns subject only</p>
Page 107	Page 109
<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection. Foundation.</p> <p>3 A. Can you -- I mean, if I could look at it</p> <p>4 I could see what she said. I just don't -- I don't</p> <p>5 remember specifically.</p> <p>6 MR. RHYS DAVIES: Let me mark another</p> <p>7 exhibit.</p> <p>8 (Wagner Exhibit 16, CDO Asset Management</p> <p>9 Proposal for ACA CLO 2007-2, Commitments</p> <p>10 Committee, February 12, 2007 bearing</p> <p>11 Production Nos. SEC 6480405 through 6480407,</p> <p>12 was marked for identification)</p> <p>13 BY MR. RHYS DAVIES:</p> <p>14 Q. Wagner Exhibit 16 is a document</p> <p>15 beginning Bates number SEC 06480405 through 07.</p> <p>16 A. Okay.</p> <p>17 Q. Do you recall reviewing this document as</p> <p>18 an exhibit to Ms. Schwartz' deposition?</p> <p>19 A. I may have looked at it. I don't recall</p> <p>20 the specifics of what's in here. I think I did</p> <p>21 look at it actually, yes.</p> <p>22 Q. Directing your attention to the top of</p> <p>23 page 2 under the heading Proposal, you will see</p> <p>24 about halfway down the paragraph it says, "This</p> <p>25 transaction was structured as a result of Bear</p>	<p>1 I. Wagner</p> <p>2 to ACA's approval?</p> <p>3 MR. SCHULTZ: Objection to form.</p> <p>4 A. What I don't recall is how much we</p> <p>5 showed them and what they -- I don't remember the</p> <p>6 back and forth, if there was any on the specifics</p> <p>7 of the portfolio. I mean, this was in the context</p> <p>8 of doing CLOs at the time Bear Stearns and others</p> <p>9 would tend -- there was a lot of demand for</p> <p>10 leveraged loans.</p> <p>11 And so dealers would typically assemble</p> <p>12 some amount of leveraged loans so that they could</p> <p>13 do just this, seed a portfolio.</p> <p>14 I don't know whether ACA approved every</p> <p>15 single name or some or -- I just don't have the</p> <p>16 details.</p> <p>17 BY MR. RHYS DAVIES:</p> <p>18 Q. But your understanding is that it would</p> <p>19 be accurate to disclose to investors that ACA had</p> <p>20 selected the portfolio even though the investment</p> <p>21 bank had provided a seed portfolio?</p> <p>22 MR. SCHULTZ: Objection to form.</p> <p>23 A. In general, if they went through their</p> <p>24 process and approved it, then yes, they selected</p> <p>25 these.</p>

28 (Pages 106 to 109)

Ira Wagner

February 5, 2013

New York, NY

Page 110	Page 112
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Taking you back to Exhibit 15 which was</p> <p>4 the draft engagement letter that we looked at.</p> <p>5 A. Okay.</p> <p>6 Q. Do you recall that we looked at the part</p> <p>7 of paragraph B where it said that: "Bear Stearns'</p> <p>8 role shall include providing a portfolio in an</p> <p>9 amount equal to 50 percent of the original</p> <p>10 collateral which, subject to ACA's approval, shall</p> <p>11 form part of the original collateral."</p> <p>12 Do you know whether investors were told</p> <p>13 that there was this agreement between Bear Stearns</p> <p>14 and ACA?</p> <p>15 MR. SCHULTZ: Objection. Foundation.</p> <p>16 Form.</p> <p>17 A. I don't know.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. In your rebuttal report, at paragraph</p> <p>20 27, you say that this transaction was a cash CLO;</p> <p>21 is that correct?</p> <p>22 A. Yes, it was.</p> <p>23 Q. Do you see that in Exhibit 16 that we</p> <p>24 have just been looking at, ACA at least refers to</p> <p>25 it as a cash/synthetic transaction?</p>	<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection to form.</p> <p>3 A. In this circumstance, no, I don't think</p> <p>4 I would reach that conclusion.</p> <p>5 BY MR. RHYS DAVIES:</p> <p>6 Q. Although your opinion in this matter, if</p> <p>7 I understand it correctly, is that collateral</p> <p>8 managers typically were free to exercise</p> <p>9 independent judgment as to collateral selection; is</p> <p>10 that true?</p> <p>11 MR. SCHULTZ: Objection to form.</p> <p>12 A. I think you have to go into more detail</p> <p>13 about what my opinion is in this case. I do think</p> <p>14 there were significant differences between what</p> <p>15 took place in this CLO and what took place in</p> <p>16 Abacus.</p> <p>17 BY MR. RHYS DAVIES:</p> <p>18 Q. Is it your opinion that the word</p> <p>19 "select" had a different meaning in CLOs than it</p> <p>20 had in CDOs?</p> <p>21 A. No.</p> <p>22 Q. Let me ask you about another</p> <p>23 transaction, ACA ABS CDO 2007-3.</p> <p>24 Do you remember this transaction?</p> <p>25 A. We did -- I don't know if this is one</p>
Page 111	Page 113
<p>1 I. Wagner</p> <p>2 A. Where do they say that?</p> <p>3 Q. This is in the box under the heading Key</p> <p>4 Transaction Metrics.</p> <p>5 A. I see they wrote that, yes.</p> <p>6 Q. So what is the basis for your</p> <p>7 understanding that it was a purely cash</p> <p>8 transaction?</p> <p>9 A. I think all the assets were cash in</p> <p>10 fact.</p> <p>11 Q. You recall that?</p> <p>12 A. That was the general -- that was</p> <p>13 generally how the CLOs we worked on worked.</p> <p>14 Q. Going back up to the text under the</p> <p>15 heading Proposal in this Exhibit 16, you see the</p> <p>16 text: "We have agreed to keep the fact of us</p> <p>17 getting a seed portfolio confidential."</p> <p>18 A. Yes, I see that.</p> <p>19 Q. Did Bear Stearns ask ACA to keep</p> <p>20 confidential the fact that Bear Stearns had</p> <p>21 provided the seed portfolio?</p> <p>22 A. I honestly don't recall that we did.</p> <p>23 Q. And if that fact was withheld from</p> <p>24 investors, would you regard that as a misleading</p> <p>25 omission?</p>	<p>1 I. Wagner</p> <p>2 that Bear Stearns did. We did some for ACA.</p> <p>3 (Wagner Exhibit 17, E-mail string</p> <p>4 beginning with e-mail dated 6/29/07 with</p> <p>5 attachment bearing Production Nos. SEC 222080</p> <p>6 through 222088, was marked for</p> <p>7 identification)</p> <p>8 BY MR. RHYS DAVIES:</p> <p>9 Q. Wagner Exhibit 17 is an e-mail with</p> <p>10 attachment that begins on SEC 000222080 and</p> <p>11 continues through 088.</p> <p>12 A. Okay.</p> <p>13 Q. Directing your attention first to the</p> <p>14 e-mail, was Taylor Wakefield someone who reported</p> <p>15 to you at Bear Stearns?</p> <p>16 A. Yes, he was.</p> <p>17 Q. What was his role?</p> <p>18 A. He was a banker on the -- doing these</p> <p>19 types of transactions.</p> <p>20 Q. And the attachment to this e-mail,</p> <p>21 is this the working group list that Bear</p> <p>22 Stearns prepared for the ACA ABS CDO 2007-3</p> <p>23 transaction?</p> <p>24 MR. SCHULTZ: Objection. Foundation.</p> <p>25 A. It looks like it, yes.</p>

29 (Pages 110 to 113)

Ira Wagner

February 5, 2013

New York, NY

Page 114	Page 116
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. And on the first page it has the people</p> <p>4 at ACA working on this transaction, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Including Laura Schwartz, Keith Gorman?</p> <p>7 A. Yes.</p> <p>8 Q. And then it has on the next page,</p> <p>9 Transaction Counsel, Schulte Roth &amp; Zabel?</p> <p>10 A. Yes.</p> <p>11 Q. What was the role of transaction</p> <p>12 counsel, if you recall?</p> <p>13 MR. SCHULTZ: Objection to form.</p> <p>14 A. I think this was the counsel to ACA</p> <p>15 actually. I'm not sure what was meant when they</p> <p>16 called it transaction counsel.</p> <p>17 BY MR. RHYS DAVIES:</p> <p>18 Q. Then the next page is the Bear Stearns</p> <p>19 team; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. With your name first?</p> <p>22 A. Yes.</p> <p>23 Q. And these people worked under your</p> <p>24 supervision on this transaction?</p> <p>25 A. Yes. The CDS people didn't report to</p>	<p>1 I. Wagner</p> <p>2 Zabel prepared them and Orrick reviewed them; is</p> <p>3 that what you recall?</p> <p>4 MR. SCHULTZ: Objection. Foundation.</p> <p>5 A. I'm not sure I'm concluding it from the</p> <p>6 titles here and how this may have worked.</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. When you refer to the documents, which</p> <p>9 documents are you referring to?</p> <p>10 A. Well, again, the principal documents</p> <p>11 would be the indenture, the collateral management</p> <p>12 agreement and the offering circular.</p> <p>13 (Wagner Exhibit 18, E-mail dated 6/26/07</p> <p>14 with attachment bearing Production Nos. SEC</p> <p>15 6662708 through 6662980, was marked for</p> <p>16 identification)</p> <p>17 BY MR. RHYS DAVIES:</p> <p>18 Q. Wagner Exhibit 18 is a multipage</p> <p>19 document beginning on SEC 06662708 running through</p> <p>20 2980.</p> <p>21 A. Okay.</p> <p>22 Q. Which has an e-mail from Jorge Martin.</p> <p>23 A. Yes.</p> <p>24 Q. Do you recognize that person?</p> <p>25 A. I don't actually.</p>
Page 115	Page 117
<p>1 I. Wagner</p> <p>2 me, and neither did Scott Eichel.</p> <p>3 Q. Other than the CDS people and</p> <p>4 Mr. Eichel --</p> <p>5 A. Yes. The other people did. I'm sorry.</p> <p>6 There's people on the next page.</p> <p>7 Adam Siegel and Tom Duda, the trading</p> <p>8 people did not. Jean Fleischhacker did. Carol</p> <p>9 Fuller did not. And the CDO settlement people did</p> <p>10 not.</p> <p>11 Q. And then next are underwriter counsel.</p> <p>12 A. Yes. Orrick.</p> <p>13 Q. What was their role in this transaction,</p> <p>14 if you recall?</p> <p>15 A. They represented Bear Stearns.</p> <p>16 Actually, looking at this, I would say that</p> <p>17 typically we had Orrick do the transaction</p> <p>18 documents. I think -- I would conclude from this</p> <p>19 that -- sometimes a manager would ask that, for</p> <p>20 example, their counsel would do the documents so</p> <p>21 that they would be similar, the indenture would be</p> <p>22 similar to what they use. So I think that was the</p> <p>23 case here. So Orrick would review the documents on</p> <p>24 behalf of Bear Stearns.</p> <p>25 Q. So in this transaction Schulte Roth &amp;</p>	<p>1 I. Wagner</p> <p>2 Q. It was sent to a group of people,</p> <p>3 including Laura Schwartz and others, at ACA?</p> <p>4 A. Yes.</p> <p>5 Q. And including a group of people at Bear</p> <p>6 Stearns?</p> <p>7 A. Yes.</p> <p>8 Q. And attaching the preliminary offering</p> <p>9 circular for ACA ABS 2007-3?</p> <p>10 A. Yes.</p> <p>11 Q. Let me ask you to turn to page (ii) of</p> <p>12 the offering circular.</p> <p>13 A. Okay.</p> <p>14 Q. You see there at the top: "ACA</p> <p>15 Management, LLC, a Delaware limited liability</p> <p>16 company," defined as "'ACA Management' or the</p> <p>17 'Collateral Manager' will perform certain</p> <p>18 administrative and management services for the</p> <p>19 issuer, including the selection of the collateral</p> <p>20 debt securities as defined herein."</p> <p>21 A. Yes.</p> <p>22 Q. Do you see that?</p> <p>23 Let me ask you now to turn to page 147</p> <p>24 of the offering circular.</p> <p>25 A. Okay.</p>

30 (Pages 114 to 117)

Ira Wagner

February 5, 2013

New York, NY

Page 118	Page 120
<p>1 I. Wagner</p> <p>2 Q. This is, again, the section under the</p> <p>3 heading The Collateral Manager.</p> <p>4 A. (Nodding affirmatively).</p> <p>5 Q. Do you see under the heading General,</p> <p>6 five or six lines down it says, "The collateral</p> <p>7 manager will select the portfolio of collateral</p> <p>8 debt securities and eligible investments."</p> <p>9 A. Okay.</p> <p>10 Q. Do you recall that in this transaction</p> <p>11 in fact Bear Stearns had to approve each and every</p> <p>12 bond before it went into the reference portfolio?</p> <p>13 MR. SCHULTZ: Objection to form and</p> <p>14 foundation.</p> <p>15 A. I don't recall.</p> <p>16 (Wagner Exhibit 19, E-mail string</p> <p>17 beginning with e-mail dated 4/5/07 with</p> <p>18 attachment beginning with page bearing</p> <p>19 Production No. SEC 03426345, was marked for</p> <p>20 identification)</p> <p>21 BY MR. RHYS DAVIES:</p> <p>22 Q. Wagner Exhibit 19 is a series of</p> <p>23 documents. It's a compilation that we have put</p> <p>24 together. And I would ask you to take a moment to</p> <p>25 familiarize yourself with it, please.</p>	<p>1 I. Wagner</p> <p>2 you?</p> <p>3 A. No. I don't remember Keith.</p> <p>4 MR. SCHULTZ: Andrew, just so I don't</p> <p>5 interrupt all your questions about the</p> <p>6 various documents in there, can I have a</p> <p>7 standing objection to form and foundation so</p> <p>8 I don't interrupt your flow?</p> <p>9 MR. RHYS DAVIES: Certainly.</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. Do you see in the top e-mail Mr. Lind</p> <p>12 from Bear Stearns writes: "Approved"?</p> <p>13 A. Yes. I do want to point out what the</p> <p>14 subject of it is, which it talks about warehouse</p> <p>15 approval. I just want to point out that I think</p> <p>16 it's important to consider the purpose of all of</p> <p>17 this.</p> <p>18 Q. Mr. Wagner, do you know whether the</p> <p>19 assets in the warehouse on this transaction became</p> <p>20 part of the reference portfolio upon closing?</p> <p>21 MR. SCHULTZ: Objection. Same</p> <p>22 objections.</p> <p>23 A. I don't know.</p> <p>24 BY MR. RHYS DAVIES:</p> <p>25 Q. Typically would the assets in the</p>
Page 119	Page 121
<p>1 I. Wagner</p> <p>2 A. Okay.</p> <p>3 (Witness reviewing document).</p> <p>4 Okay.</p> <p>5 Q. Have you had a chance to look at this</p> <p>6 document?</p> <p>7 A. Some of it, yes. Okay.</p> <p>8 Q. Let's look at the first page, the</p> <p>9 document with the Bates number SEC 03426345.</p> <p>10 You'll see the e-mail from Sarah Dunn at ACA to</p> <p>11 this group of people from Bear?</p> <p>12 A. Yes.</p> <p>13 Q. Where Ms. Dunn writes: "We are</p> <p>14 considering the purchase of the following security</p> <p>15 into ACA ABS 2007-3. Please let me know if you</p> <p>16 have any questions."</p> <p>17 And then there is a description of the</p> <p>18 security. Correct?</p> <p>19 MR. SCHULTZ: Objection to form.</p> <p>20 Foundation.</p> <p>21 A. Yes. Well, it looks like it, yes.</p> <p>22 BY MR. RHYS DAVIES:</p> <p>23 Q. And then the top e-mail is from Keith</p> <p>24 Lind at Bear.</p> <p>25 Is Keith Lind someone who reported to</p>	<p>1 I. Wagner</p> <p>2 warehouse have become part of the reference</p> <p>3 portfolio on closing?</p> <p>4 A. Typically, yes.</p> <p>5 Q. And do you see from this exhibit that</p> <p>6 this pattern of ACA asking for approval for a</p> <p>7 certain bond and then approval being provided by</p> <p>8 Bear happened throughout the course of this -- of</p> <p>9 the e-mails reflected in this exhibit?</p> <p>10 A. Well, I would note that we approved</p> <p>11 each request that you have shown me. I don't</p> <p>12 know if this is exhaustive; but I would say that</p> <p>13 they were approved for the purpose of going into</p> <p>14 the warehouse, and I don't see any that we turned</p> <p>15 down.</p> <p>16 Q. Do you recall the disclosure that we</p> <p>17 looked at in the offering circular in Exhibit 18 a</p> <p>18 moment ago where it said, "The collateral manager</p> <p>19 will select the portfolio of collateral debt</p> <p>20 securities and eligible investments"?</p> <p>21 A. Yes.</p> <p>22 Q. Did you see any reference in there to</p> <p>23 Bear Stearns having to approve each bond?</p> <p>24 MR. SCHULTZ: Objection to form.</p> <p>25 A. No.</p>

31 (Pages 118 to 121)

Ira Wagner

February 5, 2013

New York, NY

Page 122	Page 124
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. So do you believe that the disclosure in</p> <p>4 the offering document is misleading?</p> <p>5 MR. SCHULTZ: Objection to form.</p> <p>6 A. I think in the context of all of the</p> <p>7 facts that are relevant in this transaction, no. I</p> <p>8 don't think it's misleading. I think they're</p> <p>9 different, again, from Abacus; but I don't think</p> <p>10 they're misleading in this transaction.</p> <p>11 BY MR. RHYS DAVIES:</p> <p>12 Q. Do you think that the word select has a</p> <p>13 different meaning in this transaction than it had</p> <p>14 in the Abacus 2007-AC1 transaction?</p> <p>15 MR. SCHULTZ: Objection to form.</p> <p>16 A. No. I don't think they're a different</p> <p>17 meaning.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Do you recall that Bear Stearns was the</p> <p>20 initial protection buyer or the short on the</p> <p>21 super-senior tranche of ACA ABS CDO 2007-3?</p> <p>22 MR. SCHULTZ: Objection to form.</p> <p>23 Foundation.</p> <p>24 A. That we were the short... I'm sorry.</p> <p>25 Say that again.</p>	<p>1 I. Wagner</p> <p>2 But I don't know how -- if we were short</p> <p>3 any of the positions or how that would have</p> <p>4 impacted it.</p> <p>5 If you look through these, you can see</p> <p>6 that they're getting positions from other dealers.</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. Let me ask you to take a look back at</p> <p>9 Exhibit 18 for a moment, the offering circular.</p> <p>10 A. Okay.</p> <p>11 Q. Page 20 of the offering circular.</p> <p>12 A. Okay.</p> <p>13 Q. In the middle of the page it says, "No</p> <p>14 Coverage Tests."</p> <p>15 A. Yes.</p> <p>16 Q. And the language says, "The indenture</p> <p>17 will not provide for any interest coverage tests or</p> <p>18 overcollateralization tests, and the issuer will</p> <p>19 not be required to maintain specified levels of</p> <p>20 overcollateralization or minimum levels of interest</p> <p>21 proceeds before distributing excess interest</p> <p>22 proceeds to the preference shareholders."</p> <p>23 Do you see that language?</p> <p>24 MR. SCHULTZ: Objection to form.</p> <p>25 A. Yes.</p>
Page 123	Page 125
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. Do you recall that Bear Stearns was the</p> <p>4 initial short on the super-senior tranche of this</p> <p>5 transaction?</p> <p>6 MR. SCHULTZ: Same objections.</p> <p>7 A. I don't know whether -- we typically</p> <p>8 would be the counterparty to the CDS in the CDO,</p> <p>9 but I don't recall specifically that position.</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. Do you know whether Bear Stearns was</p> <p>12 short any other part of the CDO?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know what other positions Bear</p> <p>15 Stearns had in respect of the reference collateral</p> <p>16 in this CDO?</p> <p>17 A. No.</p> <p>18 Q. Did Bear Stearns make sure that it</p> <p>19 wasn't short any part of the underlying collateral</p> <p>20 before it was allowed to have input into the</p> <p>21 selection of the portfolio for this CDO?</p> <p>22 MR. SCHULTZ: Objection to form.</p> <p>23 A. I just want to say what we did was</p> <p>24 approve assets into the warehouse. And I don't</p> <p>25 know that we did anything else.</p>	<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. In the CDO market as of this time, 2007,</p> <p>4 was the absence of interest coverage or</p> <p>5 overcollateralization triggers an unusual feature?</p> <p>6 MR. SCHULTZ: Objection to form.</p> <p>7 A. I mean, I don't know if I would consider</p> <p>8 it unusual. It was certainly a risk factor which</p> <p>9 this is included in, because many CDOs, including</p> <p>10 structured finance CDOs, would have those features</p> <p>11 which would be considered a protection or an added</p> <p>12 protection to investors. There were certainly</p> <p>13 transactions structured in this way.</p> <p>14 BY MR. RHYS DAVIES:</p> <p>15 Q. You said it was a risk factor that was</p> <p>16 disclosed to investors?</p> <p>17 A. In this transaction it was.</p> <p>18 Q. Would you consider it a shortcoming of</p> <p>19 this CDO that it did not have these triggers?</p> <p>20 A. It was a risk factor. I think it was</p> <p>21 important for investors to think about how that</p> <p>22 impacted the performance.</p> <p>23 Q. But any issue was addressed by it being</p> <p>24 disclosed to investors?</p> <p>25 A. I think the disclosure made the point</p>

32 (Pages 122 to 125)

Ira Wagner

February 5, 2013

New York, NY

Page 126	Page 128
<p>1 I. Wagner</p> <p>2 that that was something an investor should</p> <p>3 consider.</p> <p>4 Q. Do you think that this factor, the</p> <p>5 absence of the interest coverage and</p> <p>6 overcollateralization triggers, made the role of</p> <p>7 ACA as portfolio selection agent more important in</p> <p>8 this transaction?</p> <p>9 MR. SCHULTZ: Objection to form.</p> <p>10 Foundation.</p> <p>11 A. I can't say it made it more important or</p> <p>12 less important, no.</p> <p>13 BY MR. RHYS DAVIES:</p> <p>14 Q. Do you recall appearing in 2009 in a</p> <p>15 television program on CNBC called House of Cards?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall being asked about</p> <p>18 investors' ability to understand CDOs?</p> <p>19 A. I think that was a topic that was asked</p> <p>20 about, yes.</p> <p>21 Q. And do you recall saying that if you are</p> <p>22 investing in them you had a responsibility to</p> <p>23 understand them?</p> <p>24 A. I don't recall what I said specifically.</p> <p>25 That doesn't -- I may have said that.</p>	<p>1 I. Wagner</p> <p>2 A. Correct.</p> <p>3 Q. Could I ask you to turn to paragraph 68</p> <p>4 of your opening report. And you'll see this is a</p> <p>5 slide from the Abacus flip book which describes</p> <p>6 ACA's credit selection process?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any reason to think that</p> <p>9 these steps did not take place in the Abacus</p> <p>10 2007-AC1 transaction?</p> <p>11 A. Well, I think they didn't take place to</p> <p>12 the extent of Paulson's involvement limiting --</p> <p>13 vetoing assets that were selected by ACA, and I</p> <p>14 think limiting the universe that essentially ACA</p> <p>15 could select from.</p> <p>16 So I think that they didn't really do</p> <p>17 exactly what was here without some other material</p> <p>18 information that needed to be disclosed.</p> <p>19 Q. Do you know whether the ultimate</p> <p>20 portfolio in the Abacus 2007-AC1 CDO contained</p> <p>21 bonds outside the list originally provided by</p> <p>22 Paulson?</p> <p>23 A. I think it did.</p> <p>24 Q. Let me ask you to turn to paragraph 77</p> <p>25 of your opening report. And we looked at this</p>
Page 127	Page 129
<p>1 I. Wagner</p> <p>2 Q. Is that consistent with your view?</p> <p>3 A. I think so, yes.</p> <p>4 MR. RHYS DAVIES: Let's take five</p> <p>5 minutes if we could.</p> <p>6 THE VIDEOGRAPHER: We are going off the</p> <p>7 record at 11:56 a.m.</p> <p>8 (Recess)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record at 12:06 p.m.</p> <p>11 BY MR. RHYS DAVIES:</p> <p>12 Q. Mr. Wagner, it's your opinion, isn't it,</p> <p>13 that Paulson's involvement compromised ACA's</p> <p>14 portfolio selection process in a way that increased</p> <p>15 the risk to long investors?</p> <p>16 A. I think that's true, yes.</p> <p>17 Q. And in your rebuttal report, you have</p> <p>18 expressed the view that Paulson was at least as</p> <p>19 important as ACA in selecting the portfolio; that's</p> <p>20 your opinion?</p> <p>21 A. I think that's true given the activities</p> <p>22 that they -- excuse me, how they participated in</p> <p>23 the portfolio selection process.</p> <p>24 Q. So that's a conclusion you are drawing</p> <p>25 from looking at the evidence in this case?</p>	<p>1 I. Wagner</p> <p>2 earlier this morning. In this paragraph, if I</p> <p>3 understand it correctly, you are crediting Laura</p> <p>4 Schwartz and Alan Roseman's testimony about whether</p> <p>5 ACA would have agreed to serve as portfolio</p> <p>6 selection agent if it had known certain facts about</p> <p>7 Paulson; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. When you were formulating your opinions,</p> <p>10 you read Laura Schwartz' deposition transcript; is</p> <p>11 that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And do you recall Laura Schwartz</p> <p>14 testifying that ACA selected the initial reference</p> <p>15 portfolio for the Abacus 2007 AC1 transaction?</p> <p>16 A. I believe she said something to that</p> <p>17 extent, yes.</p> <p>18 Q. And on the list of documents that you</p> <p>19 considered was also Alan Roseman's deposition</p> <p>20 transcript; is that correct?</p> <p>21 A. Yes, it was.</p> <p>22 Q. And do you recall Mr. Roseman testifying</p> <p>23 that ACA's review of the collateral was similar to</p> <p>24 every other cash or synthetic RMBS CDO ACA was</p> <p>25 involved with during that time period?</p>

33 (Pages 126 to 129)

Ira Wagner

February 5, 2013

New York, NY

Page 130	Page 132
<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection. Foundation.</p> <p>3 A. I think he said something like that. I</p> <p>4 don't have it in front of me.</p> <p>5 BY MR. RHYS DAVIES:</p> <p>6 Q. Also on the list of documents you</p> <p>7 considered were Keith Gorman's deposition</p> <p>8 transcript; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And do you recall Mr. Gorman testifying</p> <p>11 that ACA selected the portfolio in the standard</p> <p>12 process that it would work on for any transaction?</p> <p>13 MR. SCHULTZ: Objection. Foundation.</p> <p>14 A. I think so.</p> <p>15 BY MR. RHYS DAVIES:</p> <p>16 Q. Do you recall Mr. Gorman testifying that</p> <p>17 Paulson wanted 100 names in the Abacus 2007-AC1</p> <p>18 reference portfolio, and that it was ACA that</p> <p>19 pushed for only 90 names?</p> <p>20 A. I don't recall that statement. I saw</p> <p>21 that they arrived at 90 names ultimately and that</p> <p>22 they tried to get to 100 and didn't.</p> <p>23 Q. Do you recall Mr. Gorman testifying that</p> <p>24 ACA worked to achieve a portfolio that was</p> <p>25 bulletproof?</p>	<p>1 I. Wagner</p> <p>2 do the transaction.</p> <p>3 "QUESTION: And if it didn't meet your</p> <p>4 credit standards and your approvals, would</p> <p>5 you have walked away?</p> <p>6 "ANSWER: Yes."</p> <p>7 Do you recall reviewing that testimony</p> <p>8 in connection with formulating your opinions?</p> <p>9 MR. SCHULTZ: Objection to form.</p> <p>10 A. I read his testimony, so, yes.</p> <p>11 BY MR. RHYS DAVIES:</p> <p>12 Q. How do you reconcile your opinion that</p> <p>13 this was a compromised selection process with the</p> <p>14 evidence provided by Ms. Schwartz, Mr. Gorman and</p> <p>15 Mr. Roseman?</p> <p>16 A. I would reconcile it, I think, because</p> <p>17 they took each security and did their usual</p> <p>18 analysis. They talk about systems that they have.</p> <p>19 I think one is called SARA, for example, so they</p> <p>20 did that on a security-by-security basis.</p> <p>21 But I think when you look through the</p> <p>22 whole process, and maybe they -- you know, whether</p> <p>23 they had the opportunity to do that or consider it,</p> <p>24 that's something that I could do.</p> <p>25 And as I looked at it, again, they put</p>
Page 131	Page 133
<p>1 I. Wagner</p> <p>2 MR. SCHULTZ: Objection. Foundation.</p> <p>3 A. I don't recall.</p> <p>4 BY MR. RHYS DAVIES:</p> <p>5 Q. You reviewed the deposition exhibits to</p> <p>6 Mr. Gorman's deposition; is that right?</p> <p>7 A. I think so.</p> <p>8 Q. Do you recall an e-mail in which</p> <p>9 Mr. Gorman referred to the Abacus portfolio as</p> <p>10 awesome?</p> <p>11 MR. SCHULTZ: Foundation.</p> <p>12 A. It doesn't stand out in my mind. I read</p> <p>13 the exhibits.</p> <p>14 BY MR. RHYS DAVIES:</p> <p>15 Q. When you reviewed Mr. Gorman's</p> <p>16 deposition transcript, do you recall the following</p> <p>17 questions and answers that I will read:</p> <p>18 "QUESTION: Did you ever feel stressed</p> <p>19 to accept any particular suggestion by</p> <p>20 Goldman Sachs or Paulson?</p> <p>21 "ANSWER: I would say that there was</p> <p>22 some push on us to try to take some names,</p> <p>23 but at the end we had a portfolio that we had</p> <p>24 to meet our credit standards and our</p> <p>25 approvals, and that was the only way we could</p>	<p>1 I. Wagner</p> <p>2 forward a number of ideas that were not considered</p> <p>3 because Paulson didn't want them. They put forward</p> <p>4 names that weren't considered because Paulson</p> <p>5 didn't want them.</p> <p>6 Again, I think what I say in general is</p> <p>7 I'm not questioning the -- that ACA selected. I'm</p> <p>8 saying there was another piece of information</p> <p>9 that -- that in and of itself is not a complete</p> <p>10 statement of what took place in this transaction.</p> <p>11 Q. So you disagree with the testimony from</p> <p>12 the ACA witnesses that ACA selected the portfolio?</p> <p>13 MR. SCHULTZ: Objection to form.</p> <p>14 A. I think I just said I didn't disagree.</p> <p>15 I think I -- my position is that while</p> <p>16 ACA selected it, that is not the complete story of</p> <p>17 how this portfolio was put together.</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Do you recall which entity was the</p> <p>20 largest long investor in the Abacus transaction?</p> <p>21 A. I think in notional amount it would have</p> <p>22 been ACA in terms of where different -- in terms of</p> <p>23 different people in the capital structure. IKB</p> <p>24 took a large position in a mezzanine tranche, but I</p> <p>25 think it was ACA.</p>

34 (Pages 130 to 133)

Ira Wagner

February 5, 2013

New York, NY

Page 134	Page 136
<p>1 I. Wagner</p> <p>2 Just to be clear, ACA's risk position</p> <p>3 was -- in the super-senior was not direct. There</p> <p>4 was ABN in between. So in effect really the</p> <p>5 largest investor was ABN. But where the risk</p> <p>6 resided was at ACA.</p> <p>7 Q. How would you reconcile ACA's</p> <p>8 investments in the Abacus 2007-AC1 transaction with</p> <p>9 your view that the portfolio selection process was</p> <p>10 compromised?</p> <p>11 MR. SCHULTZ: Objection to form.</p> <p>12 A. I think I would -- first, I would</p> <p>13 reconcile it by the fact that they didn't have all</p> <p>14 the information necessary to evaluate what they</p> <p>15 were doing. In fact, they had information that was</p> <p>16 exactly the opposite of what was taking place.</p> <p>17 So I think from that fundamental</p> <p>18 perspective, they couldn't really evaluate what was</p> <p>19 happening.</p> <p>20 BY MR. RHYS DAVIES:</p> <p>21 Q. You think that ACA couldn't evaluate the</p> <p>22 securities in the portfolio?</p> <p>23 A. They could evaluate the securities on an</p> <p>24 individual basis, but I don't know that they would</p> <p>25 have put those together as a portfolio without</p>	<p>1 I. Wagner</p> <p>2 was put to you?</p> <p>3 A. These were put to me this way, yes.</p> <p>4 Q. You say it was put to you that Paulson's</p> <p>5 involvement was atypical?</p> <p>6 A. The question was asked this way.</p> <p>7 Q. Let me ask you to look at paragraph 44</p> <p>8 of your opening report. Here you opine that</p> <p>9 Paulson's objective in choosing collateral was to</p> <p>10 identify reference obligations that would be more</p> <p>11 likely to underperform and incur losses.</p> <p>12 Is that correct?</p> <p>13 A. That's my conclusion. That's what</p> <p>14 Pellegrini and Shu in fact testified I think.</p> <p>15 Q. So that's the basis for your opinion,</p> <p>16 it's Pellegrini and Shu's testimony?</p> <p>17 A. Yes.</p> <p>18 Q. When you refer to assets most likely to</p> <p>19 suffer losses, you are referring to the testimony</p> <p>20 from Mr. Pellegrini and Mr. Shu about</p> <p>21 characteristics of the loans in the RMBS?</p> <p>22 MR. SCHULTZ: Objection to form.</p> <p>23 A. I think they were specifically asked</p> <p>24 essentially this question, and they confirmed that</p> <p>25 that was their objective.</p>
Page 135	Page 137
<p>1 I. Wagner</p> <p>2 Paulson's active involvement in it.</p> <p>3 Q. Do you know that one way or the other?</p> <p>4 A. No. I don't. I'm just saying that.</p> <p>5 But Paulson clearly influenced the composition of</p> <p>6 the portfolio.</p> <p>7 Q. Do you have any basis to think that ACA</p> <p>8 was unaware of what influence Paulson may have had</p> <p>9 in the portfolio that it was putting together?</p> <p>10 A. I think they didn't understand the</p> <p>11 objectives of Paulson in putting the portfolio</p> <p>12 together.</p> <p>13 Q. Let me ask you about your opinion in</p> <p>14 connection with Paulson's objective. Let me ask</p> <p>15 you to turn to your opening report on page 2.</p> <p>16 A. Page 2?</p> <p>17 Q. Page 2. This is the --</p> <p>18 A. The questions presented?</p> <p>19 Q. The questions presented.</p> <p>20 A. Okay.</p> <p>21 Q. Question E reads: "How could Paulson's</p> <p>22 atypical involvement in the portfolio selection</p> <p>23 process have impacted the risk to long investors,</p> <p>24 such as note purchasers in the Abacus CDO?"</p> <p>25 Is that the form in which the question</p>	<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. You recall that there was questioning at</p> <p>4 Mr. Pellegrini's deposition by the SEC about</p> <p>5 whether the Paulson hedge fund was looking for this</p> <p>6 portfolio to include RMBS with loans, including</p> <p>7 borrowers with low FICO scores, and ARM's recent</p> <p>8 vintage, high LTV ratios, and geographic</p> <p>9 concentrations in certain states that were having</p> <p>10 housing price bubbles?</p> <p>11 A. Yes.</p> <p>12 Q. Would you agree that those are</p> <p>13 characteristics that could be seen by any investor</p> <p>14 that looked at the loans in the RMBS?</p> <p>15 A. If they had access to that information,</p> <p>16 yes.</p> <p>17 Q. By the way, which were the states that</p> <p>18 were experiencing housing price bubbles at the end</p> <p>19 of 2006, early 2007?</p> <p>20 A. I think there were bubbles in a lot of</p> <p>21 places. I believe that what Paulson was looking</p> <p>22 for, if I remember right, was California and</p> <p>23 Florida, perhaps Arizona and Nevada. But those</p> <p>24 regions were certainly having those bubbles.</p> <p>25 Q. In formulating your opinion as to what</p>

35 (Pages 134 to 137)

Ira Wagner

February 5, 2013

New York, NY

Page 138	Page 140
<p>1 I. Wagner</p> <p>2 Paulson's objective was, you said you considered</p> <p>3 Mr. Pellegrini's deposition testimony, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall Mr. Pellegrini testifying</p> <p>6 that it was not realistic to try to identify the</p> <p>7 worst RMBS in the market and then to have an</p> <p>8 efficiently priced transaction?</p> <p>9 MR. SCHULTZ: Objection to form.</p> <p>10 Foundation.</p> <p>11 A. If it's there, he said it.</p> <p>12 I guess I was relying on what I quote</p> <p>13 which is, he was asked: "Is it fair to say that in</p> <p>14 choosing RMBS on which to purchase protection,</p> <p>15 Paulson was looking essentially for the RMBS that</p> <p>16 had the highest probability of loss and being</p> <p>17 written off?" And he responded: "Correct."</p> <p>18 BY MR. RHYS DAVIES:</p> <p>19 Q. Did you take into account his -- the</p> <p>20 testimony from Mr. Pellegrini that it was not</p> <p>21 realistic to try to identify the worst RMBS in the</p> <p>22 market and then to have an efficiently priced</p> <p>23 transaction?</p> <p>24 MR. SCHULTZ: Objection to form.</p> <p>25 Foundation.</p>	<p>1 I. Wagner</p> <p>2 or 2007; is that correct?</p> <p>3 A. Yes, I think so.</p> <p>4 Q. And at that meeting in 2006 or 2007 you</p> <p>5 had formed a view about the propriety of the</p> <p>6 transaction that the Paulson fund was trying to put</p> <p>7 together; is that correct?</p> <p>8 MR. SCHULTZ: Objection to form.</p> <p>9 Misstates testimony.</p> <p>10 A. Some point after meeting them I did,</p> <p>11 yes.</p> <p>12 BY MR. RHYS DAVIES:</p> <p>13 Q. So it would be fair to say that you</p> <p>14 reviewed his deposition testimony, having already</p> <p>15 formed a view about the propriety of that</p> <p>16 transaction?</p> <p>17 A. I think I read it fairly. And I think</p> <p>18 his words speak for themselves.</p> <p>19 Q. So you think you were able to put out of</p> <p>20 your mind the negative views that you had formed</p> <p>21 about the proposed transaction that was put to Bear</p> <p>22 Stearns in 2006 and 2007?</p> <p>23 MR. SCHULTZ: Objection to form.</p> <p>24 A. I think I tried to carefully consider</p> <p>25 what was here and evaluate it without that negative</p>
Page 139	Page 141
<p>1 I. Wagner</p> <p>2 A. That may have been his view. But his</p> <p>3 objective was not changed. I mean, he was looking</p> <p>4 to try and find the RMBS and include the RMBS that</p> <p>5 had the highest probability of loss and being</p> <p>6 written off. That was his objective.</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. And you derived that from reading</p> <p>9 portions of his testimony?</p> <p>10 A. It seemed like a direct question and</p> <p>11 answer. I don't think I had to -- it wasn't hard</p> <p>12 to reach that conclusion.</p> <p>13 Q. Did you take into account</p> <p>14 Mr. Pellegrini's testimony that what Paulson was</p> <p>15 trying to create was a portfolio that was</p> <p>16 representative of the market?</p> <p>17 MR. SCHULTZ: Objection to form.</p> <p>18 Foundation.</p> <p>19 A. I don't recall.</p> <p>20 BY MR. RHYS DAVIES:</p> <p>21 Q. You reviewed Mr. Pellegrini's deposition</p> <p>22 testimony in 2011; is that what you testified</p> <p>23 earlier?</p> <p>24 A. I think in the spring of 2011.</p> <p>25 Q. But you had met Mr. Pellegrini in 2006</p>	<p>1 I. Wagner</p> <p>2 bias.</p> <p>3 BY MR. RHYS DAVIES:</p> <p>4 Q. Was there some reason that you did not</p> <p>5 disclose in either of your reports that you had met</p> <p>6 Mr. Pellegrini in 2006-2007?</p> <p>7 A. There was no reason either way.</p> <p>8 Q. You testified that you tried to</p> <p>9 carefully consider the evidence and to evaluate</p> <p>10 without that negative bias; what do you mean by</p> <p>11 "negative bias"?</p> <p>12 MR. SCHULTZ: Objection to form.</p> <p>13 A. I feel like you just -- I think it's</p> <p>14 what you said to me. But I don't have the benefit</p> <p>15 of reading all of this.</p> <p>16 But you said that I had formed this</p> <p>17 opinion about the propriety of the transaction and</p> <p>18 read it with that in mind. And I was trying to say</p> <p>19 no, not with that in mind, but just to look at what</p> <p>20 was presented and what people testified.</p> <p>21 BY MR. RHYS DAVIES:</p> <p>22 Q. But will you agree that you had a</p> <p>23 negative bias towards Mr. Pellegrini based on your</p> <p>24 prior meeting with him?</p> <p>25 MR. SCHULTZ: Objection to form.</p>

36 (Pages 138 to 141)

Ira Wagner

February 5, 2013

New York, NY

Page 142

1 I. Wagner  
2 A. No. I don't think I had a negative bias  
3 towards him.  
4 I just read what he said. And I quoted  
5 what he said. I mean, these are -- they're not my  
6 -- I don't think these are words that are hard to  
7 understand or interpret. It's exactly what he  
8 said.  
9 BY MR. RHYS DAVIES:  
10 Q. You agree the opinions that you have  
11 expressed in your two reports are consistent with  
12 the negative views you had developed towards the  
13 Paulson firm and the transaction that it was  
14 proposing to put together back in 2006-2007?  
15 MR. SCHULTZ: Objection to form.  
16 A. I mean, I don't have negative views  
17 about the Paulson firm -- I don't really have a  
18 view about the Paulson firm. I don't think that's  
19 relevant.  
20 I think that -- again, I evaluated this  
21 transaction for the questions at issue, which is  
22 about the disclosure and was disclosure -- was the  
23 proper disclosure made to these investors.  
24 And I read it to the best ability I had  
25 to be fair about looking and evaluating this.

Page 143

1 I. Wagner  
2 BY MR. RHYS DAVIES:  
3 Q. So your opinion in your mind is a  
4 question of adequacy of disclosure?  
5 A. Well, I think among the issues in this  
6 case are whether the disclosure is full and  
7 complete and there's no omission, no material  
8 omission. I think that is certainly among the  
9 issues.  
10 Q. And is that one of the issues on which  
11 you're opining?  
12 A. Well, I'm not -- I state that I think  
13 there was an omission, and that this information  
14 would have been important to CDO investors.  
15 Based on my knowledge that I gained in  
16 meeting with CDO investors throughout my career, I  
17 think they would have wanted to know about  
18 Paulson's role specifically as it was executed in  
19 this transaction; and that it would have been  
20 important to their investment decision; and that  
21 each of the investors in this transaction testified  
22 to say it was important. It would have been  
23 important to them.  
24 Q. With respect to the investors in the  
25 Abacus 2007-AC1 transaction, you refer in your

Page 144

1 I. Wagner  
2 reports to IKB's record of recommendation.  
3 Do you recall that?  
4 A. Yes.  
5 Q. Do you recall what IKB said in that  
6 document about its views of ACA?  
7 A. I do, yes.  
8 Q. What do you recall?  
9 A. They made a number of different  
10 comments. They talked about ACA managing a large  
11 number of transactions. They looked at the ratings  
12 migration of those transactions. I think they said  
13 something along the lines of -- at some place they  
14 were more neutral about ACA. I don't recall the  
15 exact words, but there were pluses and minuses  
16 about ACA, I think. But again on the whole, I  
17 think ACA was important to their participation in  
18 the transaction.  
19 Q. That's something that you have derived  
20 from reading the record of recommendation?  
21 A. Yes. The record and the various e-mails  
22 about having a manager and which one -- not wanting  
23 to look at other managers.  
24 Q. Do you remember IKB writing in the  
25 record of recommendation that it was concerned over

Page 145

1 I. Wagner  
2 ACA's prudence?  
3 A. As I said, I think there were some  
4 positives and negatives that they mentioned about  
5 ACA.  
6 Q. Would you characterize a concern over  
7 ACA's prudence as neutral?  
8 A. Could I see exactly what they said? I  
9 don't remember the words. I would like to see the  
10 whole --  
11 MR. RHYS DAVIES: Certainly. Let's mark  
12 this document.  
13 (Wagner Exhibit 20, Record of  
14 Recommendation, Date of Decision: 3/27/2007  
15 bearing Production Nos. SEC 9181746 through  
16 9181760, was marked for identification)  
17 BY MR. RHYS DAVIES:  
18 Q. We have marked as Wagner Exhibit 20 a  
19 copy of IKB's record of recommendation dated March  
20 27, 2007. It's SEC 09767689 through 703.  
21 MR. SCHULTZ: Which Bates number are you  
22 referring to?  
23 MR. RHYS DAVIES: My apologies,  
24 the Bates numbers are SEC 09181746  
25 through 760.

37 (Pages 142 to 145)

Ira Wagner

February 5, 2013

New York, NY

Page 146	Page 148
<p>1 I. Wagner</p> <p>2 BY MR. RHYS DAVIES:</p> <p>3 Q. And the sections that I was asking you</p> <p>4 about, Mr. Wagner, are on page 14.</p> <p>5 A. I'm sorry. Say it again.</p> <p>6 Q. Page 14. The last page.</p> <p>7 A. The last page. Wow. This is really</p> <p>8 small. I apologize, I can't read this.</p> <p>9 MR. RHYS DAVIES: Why don't we take a</p> <p>10 break and we will see if we can get a more</p> <p>11 legible version.</p> <p>12 THE WITNESS: It's really small. I did</p> <p>13 read it. I don't think it's quite as small</p> <p>14 or quite as not clear.</p> <p>15 MR. RHYS DAVIES: Let's take our lunch</p> <p>16 break.</p> <p>17 THE VIDEOGRAPHER: This concludes tape</p> <p>18 number three. We are going off the record at</p> <p>19 12:31 p.m.</p> <p>20 (Lunch recess: 12:31 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I. Wagner</p> <p>2 A. Yes. I looked at the record of</p> <p>3 recommendation.</p> <p>4 Q. Directing you to the final page, page</p> <p>5 14.</p> <p>6 A. Sure. Okay.</p> <p>7 Q. First of all, in the section headed</p> <p>8 Relative Assessment --</p> <p>9 A. Yes.</p> <p>10 Q. -- you will see about halfway down that</p> <p>11 paragraph there is a reference that begins: "Thus</p> <p>12 although low-level data and a more cautious view on</p> <p>13 housing supports more relevant and risk conscious</p> <p>14 analysis, we remain concerned over ACA's prudence."</p> <p>15 A. Yes.</p> <p>16 Q. Did you take that into account when</p> <p>17 coming to your opinion that ACA was important to</p> <p>18 IKB's decision making?</p> <p>19 MR. SCHULTZ: Object to form.</p> <p>20 A. I mean, I think you have to look at</p> <p>21 their comments on ACA throughout this material.</p> <p>22 But they seem to be talking about that with regards</p> <p>23 to the prior discussion about ACA's -- some of</p> <p>24 their views on the housing market. And I mean, it</p> <p>25 does continue. They talk about some other things.</p>
Page 147	Page 149
<p>1 I. Wagner</p> <p>2 AFTERNOON SESSION</p> <p>3 1:36 p.m.</p> <p>4 (Wagner Exhibit 21, Record of</p> <p>5 Recommendation, Date of Decision: 3/27/07</p> <p>6 bearing Production Nos. SEC 9767689 through</p> <p>7 9767703, was marked for identification)</p> <p>8 THE VIDEOGRAPHER: This marks the start</p> <p>9 of tape number four. We're back on the</p> <p>10 record at 1:36 p.m.</p> <p>11 EXAMINATION CONTINUED</p> <p>12 BY MR. RHYS DAVIES:</p> <p>13 Q. We've marked as Exhibit 21 a more</p> <p>14 legible version of the IKB record of</p> <p>15 recommendation, Bates stamped SEC 09767689 through</p> <p>16 703.</p> <p>17 Mr. Wagner, before the lunch break, I</p> <p>18 had asked you about your opinion that ACA's role</p> <p>19 was important to IKB.</p> <p>20 Do you recall that testimony?</p> <p>21 A. In general I thought that a manager was</p> <p>22 important to IKB, and ACA met their criteria, yes.</p> <p>23 Q. In coming to that opinion, did you take</p> <p>24 into account the comments that IKB made about ACA</p> <p>25 in the record of recommendation?</p>	<p>1 I. Wagner</p> <p>2 and they say, "This assessment has proven correct</p> <p>3 making ACA now more relevant as a potential asset</p> <p>4 manager."</p> <p>5 Up above under "Investment Philosophy of</p> <p>6 Manager," they say, "Expertise lies in credit</p> <p>7 analysis, making ACA a candidate for mezzanine</p> <p>8 portfolio."</p> <p>9 I mean, think I testified they had</p> <p>10 pluses and minuses about ACA, and these are some of</p> <p>11 them.</p> <p>12 BY MR. RHYS DAVIES:</p> <p>13 Q. In the section at the bottom of this</p> <p>14 page under the heading Worth Mentioning/Investment</p> <p>15 Recommendation --</p> <p>16 A. Yes.</p> <p>17 Q. -- it says, "ACA's increased focus on</p> <p>18 low-level analysis and house price implications are</p> <p>19 commendable. However, their strong market views</p> <p>20 and belief in their models results in a less</p> <p>21 favorable score regarding prudence."</p> <p>22 A. Okay.</p> <p>23 Q. Did you take that into account in</p> <p>24 forming your opinion?</p> <p>25 MR. SCHULTZ: Objection to form.</p>

38 (Pages 146 to 149)

Ira Wagner

February 5, 2013

New York, NY

Page 150	Page 152
<p>1 I. Wagner</p> <p>2 A. Yes. I mean, again, as I said, I think</p> <p>3 they had positives and negatives, but they</p> <p>4 certainly always expressed that they wanted a</p> <p>5 manager; and ACA seemed on balance to meet their</p> <p>6 approval.</p> <p>7 BY MR. RHYS DAVIES:</p> <p>8 Q. To your knowledge did IKB invest in any</p> <p>9 of Bear Stearns' CDOs or CLOs?</p> <p>10 A. I think they did. I don't remember</p> <p>11 which transactions but they were an investor, yes.</p> <p>12 Q. Do you remember how many transactions</p> <p>13 they invested in?</p> <p>14 A. I don't know.</p> <p>15 Q. Did you ever travel to Germany to meet</p> <p>16 with IKB?</p> <p>17 A. I don't believe I ever met IKB in</p> <p>18 Germany, no.</p> <p>19 Q. Did you meet IKB representatives</p> <p>20 elsewhere?</p> <p>21 A. In New York, I think I did, yes.</p> <p>22 Q. Do you remember which representatives?</p> <p>23 A. This was a group. There was a woman.</p> <p>24 Her name was Ute, but I don't remember her last</p> <p>25 name. I'm sorry.</p>	<p>1 I. Wagner</p> <p>2 of approved managers, I think, and some general</p> <p>3 transaction characteristics that they would be</p> <p>4 interested in; but I don't remember who was on the</p> <p>5 list or exactly what they were. But they did have</p> <p>6 some guidelines as to what they were interested in.</p> <p>7 Q. IKB was an investor in the CDO markets;</p> <p>8 is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did you maintain your calendar when you</p> <p>11 were working at Bear Stearns on the Bear Stearns</p> <p>12 computer system?</p> <p>13 A. Yes. By and large, yes.</p> <p>14 Q. How did you maintain your calendar other</p> <p>15 than on the Bear Stearns computer system?</p> <p>16 A. I think that was generally it. I just</p> <p>17 can't tell you I necessarily input everything in</p> <p>18 there. But that's where I would have done it.</p> <p>19 Q. In the meeting where you met with an IKB</p> <p>20 representative, was ACA present at that meeting?</p> <p>21 A. I don't think so. I'm not sure, but I</p> <p>22 don't think so.</p> <p>23 Q. I think you testified earlier that Bear</p> <p>24 Stearns did five or six CDOs or CLOs where ACA was</p> <p>25 the collateral manager; is that correct?</p>
Page 151	Page 153
<p>1 I. Wagner</p> <p>2 Q. Do you recall when that was?</p> <p>3 A. Not with any specificity.</p> <p>4 Q. Is that the only meeting you can</p> <p>5 remember?</p> <p>6 A. Yes.</p> <p>7 Q. Do you still have a calendar for the</p> <p>8 years 2006-2007?</p> <p>9 A. No.</p> <p>10 Q. Do you know whether others at Bear</p> <p>11 Stearns met with IKB?</p> <p>12 A. I think so, yes.</p> <p>13 Q. Including people who reported to you?</p> <p>14 A. Yes. I think so.</p> <p>15 Q. Which people who reported to you do you</p> <p>16 think met with IKB?</p> <p>17 A. I think Joe Evenchick would have met</p> <p>18 with IKB.</p> <p>19 Q. And did Mr. Evenchick report to you on</p> <p>20 his meetings with IKB?</p> <p>21 A. I recall some information about IKB from</p> <p>22 him, yes.</p> <p>23 Q. What do you recall learning from</p> <p>24 Mr. Evenchick about IKB?</p> <p>25 A. As I recall, they had some sort of list</p>	<p>1 I. Wagner</p> <p>2 A. I think I said that. It's around that</p> <p>3 number.</p> <p>4 Q. What percentage of Bear Stearns CDOs and</p> <p>5 CLOs had ACA as the collateral manager?</p> <p>6 A. It wouldn't have been a large</p> <p>7 percentage, I don't think.</p> <p>8 Q. So would you say that your team at Bear</p> <p>9 Stearns were in frequent contact with ACA?</p> <p>10 A. I would say probably Kim Shafer, who was</p> <p>11 sort of -- she was assigned to ACA generally,</p> <p>12 probably maintained contact with her. I don't know</p> <p>13 how frequently she might have spoken with people at</p> <p>14 ACA, but certainly from time to time.</p> <p>15 Q. How frequently were you in communication</p> <p>16 with ACA?</p> <p>17 A. Less frequently than Kim. I don't know</p> <p>18 if -- it depended on what was going on. Maybe I</p> <p>19 would talk to someone at ACA, it could have been</p> <p>20 once a month.</p> <p>21 Q. You would talk to people at ACA on</p> <p>22 specific deals you were working on?</p> <p>23 A. It would be a range of things. Either</p> <p>24 the specific deals we were working on or things in</p> <p>25 the market, or sometimes a question from ACA about</p>

39 (Pages 150 to 153)

Ira Wagner

February 5, 2013

New York, NY

<p style="text-align: right;">Page 154</p> <p>1 I. Wagner</p> <p>2 what was going on in the market. Things like that.</p> <p>3 Q. Did you see the ACA people socially?</p> <p>4 A. Only in a work context or a conference</p> <p>5 context. So, you know, like the closing dinner or</p> <p>6 at a conference. But not on a personal level</p> <p>7 outside of a work-related thing.</p> <p>8 Q. Apart from the closing dinners that we</p> <p>9 have talked about, when do you recall spending time</p> <p>10 with ACA in a business social setting?</p> <p>11 A. I'm trying think. I don't think I could</p> <p>12 point to a specific thing. I can think of events</p> <p>13 that they might have been at, but I don't remember</p> <p>14 really spending time with them there. It's things</p> <p>15 that I would have been at that I think they would</p> <p>16 have been at.</p> <p>17 Q. Did you ever visit ACA's offices?</p> <p>18 A. Once -- I think I was there maybe only</p> <p>19 two or three times. Something like that.</p> <p>20 Q. And did ACA come to Bear Stearns'</p> <p>21 offices and meet you there?</p> <p>22 A. Sometimes, yes.</p> <p>23 Q. Through your interactions with ACA, did</p> <p>24 you form a view as to their competence as</p> <p>25 collateral managers?</p>	<p style="text-align: right;">Page 156</p> <p>1 I. Wagner</p> <p>2 A. I think so. They don't really stand out</p> <p>3 in my mind. I just think I probably went another</p> <p>4 time or two.</p> <p>5 Q. When you reviewed Laura Schwartz'</p> <p>6 investigative testimony and deposition testimony,</p> <p>7 that was in, you said, 2011?</p> <p>8 A. Well, I read the investigative testimony</p> <p>9 in the fall of 2010. And I read the other</p> <p>10 testimony, the deposition, in the spring of 2011.</p> <p>11 Q. Do you remember when you first met Laura</p> <p>12 Schwartz?</p> <p>13 A. It was subsequent to Maryam Muessel</p> <p>14 leaving because Laura stepped into that role. And</p> <p>15 I think that's when I met her. So it probably was</p> <p>16 2005 or '06, something like that.</p> <p>17 Q. And so you worked and were in contact</p> <p>18 with Laura Schwartz 2005, 2006, 2007 into 2008?</p> <p>19 A. I left Bear Stearns in February of 2008.</p> <p>20 So whether I had one conversation with her in 2008,</p> <p>21 I'm not sure.</p> <p>22 Q. Did your interactions with Laura</p> <p>23 Schwartz leave you with a view as to her</p> <p>24 credibility?</p> <p>25 MR. SCHULTZ: Object to form.</p>
<p style="text-align: right;">Page 155</p> <p>1 I. Wagner</p> <p>2 A. I think I had an understanding of their</p> <p>3 -- some understanding of their approach. I mean,</p> <p>4 we also got feedback from marketing transactions</p> <p>5 about what the market perception of ACA was, which</p> <p>6 was generally a good one.</p> <p>7 Q. You testified two or three times that</p> <p>8 you may have been at ACA's offices?</p> <p>9 A. (Nodding affirmatively).</p> <p>10 Q. Do you remember when that was?</p> <p>11 A. One was even probably before Laura</p> <p>12 Schwartz was there or Laura Schwartz wasn't in her</p> <p>13 position. There was a prior person that had</p> <p>14 Laura's position named Maryam Muessel. And I</p> <p>15 remember meeting with her. That's the one that</p> <p>16 most prominently sticks out in my mind. I think I</p> <p>17 probably went another time. I don't recall.</p> <p>18 Q. Do you remember when that first meeting</p> <p>19 was?</p> <p>20 A. With Maryam Muessel? Not really, no.</p> <p>21 I'm trying to think when Maryam Muessel left. It</p> <p>22 was probably -- you could find it out -- I don't</p> <p>23 know, 2005 maybe.</p> <p>24 Q. Do you recall one or two other meetings</p> <p>25 at ACA?</p>	<p style="text-align: right;">Page 157</p> <p>1 I. Wagner</p> <p>2 A. Yes. I would say so.</p> <p>3 BY MR. RHYS DAVIES:</p> <p>4 Q. What was that view?</p> <p>5 A. I think it was positive. She is a</p> <p>6 credible person. Very professional, serious.</p> <p>7 Q. Let me ask you the same question as to</p> <p>8 Alan Roseman. When did you first meet Alan</p> <p>9 Roseman?</p> <p>10 A. It was more recent than the first</p> <p>11 meetings with ACA. I'm trying to think when he</p> <p>12 actually became -- came into his role. I just</p> <p>13 remember having dinner with him at one time with a</p> <p>14 few other ACA people. And he may have come to that</p> <p>15 closing dinner that I went to, I'm not 100 percent</p> <p>16 sure. He may have been there. So I may have</p> <p>17 talked with him in a meeting once or twice.</p> <p>18 Q. Did you form a view of him in terms of</p> <p>19 his credibility at those interactions?</p> <p>20 A. I didn't have the same degree of</p> <p>21 dealings with him. I had no reason -- nothing</p> <p>22 about him sort of said, This is someone I couldn't</p> <p>23 believe. He seemed -- again, he seemed</p> <p>24 professional, I think, but I didn't have -- it</p> <p>25 wasn't an in-depth discussion to base that on.</p>

40 (Pages 154 to 157)

Ira Wagner

February 5, 2013

New York, NY

Page 158	Page 160
<p>1 I. Wagner</p> <p>2 Q. Let me ask you the same questions about</p> <p>3 Keith Gorman. When did you first meet Keith</p> <p>4 Gorman?</p> <p>5 A. When did I first meet Keith Gorman?</p> <p>6 Probably in person -- maybe at a meeting at our --</p> <p>7 I'm not really sure. They may have come up to our</p> <p>8 offices. I certainly met him or talked with him at</p> <p>9 the closing dinner, I think.</p> <p>10 Q. And based on your interactions with</p> <p>11 Keith Gorman while you were still at Bear Stearns,</p> <p>12 did you formulate a view of him in terms of his</p> <p>13 credibility?</p> <p>14 A. Yes. I think so. I mean, I think --</p> <p>15 again, I think he was much more junior than Laura.</p> <p>16 I don't remember his exact number of years of</p> <p>17 experience, but it was certainly less. He was</p> <p>18 young, which is okay. And he seemed to know how to</p> <p>19 do his job. I don't know that I had a bigger</p> <p>20 impression than that.</p> <p>21 Q. Did you consider including in your</p> <p>22 report any disclosure of your interactions with</p> <p>23 Ms. Schwartz, Mr. Roseman or Mr. Gorman while you</p> <p>24 were at Bear Stearns?</p> <p>25 A. No. I don't think there was really</p>	<p>1 I. Wagner</p> <p>2 manager for the transaction."</p> <p>3 Is it your understanding that long</p> <p>4 investors sometimes participated not only in</p> <p>5 selection of a collateral manager but in the</p> <p>6 portfolio selection itself?</p> <p>7 A. By and large not to a great extent or</p> <p>8 really -- I think it would be quite limited, if</p> <p>9 any.</p> <p>10 Q. What do you mean by "not to a great</p> <p>11 extent"?</p> <p>12 A. Well, for example -- there's a couple of</p> <p>13 different things, I think. If a participant had,</p> <p>14 for example, ended up investing and then taking</p> <p>15 warehouse risk, for example, they might have some</p> <p>16 ability to approve or disapprove assets going into</p> <p>17 the warehouse.</p> <p>18 Sometimes a CDO investor would ask to</p> <p>19 see the ramped-up portfolio because, I think as you</p> <p>20 know, CDOs sometimes are marketed or even priced</p> <p>21 and closed without the full portfolio, so they'll</p> <p>22 ask to see what's there.</p> <p>23 I would say from time to time an</p> <p>24 investor might be very specific about a credit or</p> <p>25 two that they might be worried about and ask to</p>
Page 159	Page 161
<p>1 I. Wagner</p> <p>2 anything particularly notable about it nor</p> <p>3 necessarily relevant, so no.</p> <p>4 Q. Mr. Wagner, you have opined that it was</p> <p>5 not typical for a purely short investor to play a</p> <p>6 direct role in portfolio selection; is that</p> <p>7 correct?</p> <p>8 A. Yes. I think that's in the report, yes.</p> <p>9 Q. Let's go to your opening report.</p> <p>10 A. Okay.</p> <p>11 Q. On page 5.</p> <p>12 A. Okay.</p> <p>13 Q. You say that long investors did</p> <p>14 sometimes participate in portfolio selection; is</p> <p>15 that right?</p> <p>16 A. I don't think I said exactly that.</p> <p>17 Q. Let me take you to the sentence that</p> <p>18 begins with the words "At times...."</p> <p>19 A. Right.</p> <p>20 Q. "At times, CDOs would arise out of a</p> <p>21 'reverse inquiry' in which a prospective long</p> <p>22 investor would approach an underwriter regarding</p> <p>23 its interest in making a significant investment in</p> <p>24 a portion of a CDO for a specific asset class and</p> <p>25 in participating in the selection of a collateral</p>	<p>1 I. Wagner</p> <p>2 speak to the manager about it and get their</p> <p>3 perspective. And sometimes an investor might say,</p> <p>4 I would invest but I really -- I don't want name X.</p> <p>5 But this is like one name or two.</p> <p>6 I really don't recall an investor</p> <p>7 saying, I would like you to buy X, Y or Z. It was</p> <p>8 really more, Could I see the portfolio? And</p> <p>9 occasionally asking about some credits, What was</p> <p>10 the manager's thoughts. And maybe voicing some</p> <p>11 particular concern about one or two.</p> <p>12 Q. When a long investor had any of those</p> <p>13 forms of involvement or discussions, was that</p> <p>14 disclosed to short investors?</p> <p>15 A. To short investors?</p> <p>16 Q. In a synthetic CDO.</p> <p>17 A. Well, there wouldn't have been a short</p> <p>18 investor in the CDO. I mean, the short to the CDO</p> <p>19 is usually the originating dealer.</p> <p>20 Q. And if the originating dealer sold its</p> <p>21 short to another protection buyer, would the fact</p> <p>22 of the long investor's involvement, if any, in</p> <p>23 portfolio selection be disclosed?</p> <p>24 A. Well, usually -- I mean, as a general</p> <p>25 rule -- there could be many different ways the</p>

41 (Pages 158 to 161)

Page 162	Page 164
<p>1 I. Wagner</p> <p>2 dealers handled it. But they tended to be -- the</p> <p>3 shorts on the other side of the dealer or the</p> <p>4 dealer selling protection to balance the short</p> <p>5 would more typically be name by name, not sort of</p> <p>6 taking that same portfolio as the CDO.</p> <p>7 Q. You used the expression "a pure short"</p> <p>8 several times in your report. Can you explain what</p> <p>9 you mean by that?</p> <p>10 A. Well, I think -- what I mean is what</p> <p>11 Paulson was, which was only a short investor. They</p> <p>12 weren't also investing in any of the long</p> <p>13 securities in the CDO itself. So their only</p> <p>14 interest was being the purely short investor. They</p> <p>15 had no other interest in the CDO.</p> <p>16 Q. And you address that in footnote 4 of</p> <p>17 your opening report, is that right, page 5?</p> <p>18 A. Yes. I mean, I think that's what it</p> <p>19 says, right, by purely I'm referring to an investor</p> <p>20 who did not also take a long position in the CDO.</p> <p>21 Q. So a purely short investor is someone</p> <p>22 who has no long investment at all?</p> <p>23 A. In the CDO.</p> <p>24 Q. In the CDO.</p> <p>25 And how much of a long investment does</p>	<p>1 I. Wagner</p> <p>2 would invest in equity and also take larger short</p> <p>3 positions on the notes higher up in the CDO</p> <p>4 structure?</p> <p>5 A. Yes. I mean, I know of those</p> <p>6 transactions.</p> <p>7 Q. You would not regard those as pure</p> <p>8 shorts; is that correct?</p> <p>9 A. As a general matter, as I understand it,</p> <p>10 I would not. I guess if you had to look at a</p> <p>11 specific transaction, you would want to look at</p> <p>12 what in fact they were doing. But, no, as a</p> <p>13 general matter, I wouldn't think that was a purely</p> <p>14 short investor in the CDO based on purchasing some</p> <p>15 usually significant amount of the CDO capital</p> <p>16 structure.</p> <p>17 Q. Was it typical for investors of that</p> <p>18 kind, people who were buying some equity and taking</p> <p>19 larger short positions -- was it typical for those</p> <p>20 types of investors to have a role in portfolio</p> <p>21 selection?</p> <p>22 A. Well, I think, you know, again -- I</p> <p>23 mean, I don't -- was it typical? There were</p> <p>24 certainly a number of transactions that hedge funds</p> <p>25 had that strategy of purchasing equity and shorting</p>
Page 163	Page 165
<p>1 I. Wagner</p> <p>2 it take to move an investor out of the purely short</p> <p>3 category?</p> <p>4 A. I guess it's hypothetical. Clearly</p> <p>5 "pure" means there's zero on the other side. I</p> <p>6 think pure is a pretty high standard. I imagine if</p> <p>7 they made some investment, they would no longer be</p> <p>8 purely short.</p> <p>9 Q. And is there a monetary threshold for a</p> <p>10 minimum level of long investment that it would take</p> <p>11 to move someone out of the purely short category?</p> <p>12 A. I don't know.</p> <p>13 Q. When you refer to a purely short</p> <p>14 investor, do I understand correctly that you are</p> <p>15 assessing whether someone is short or long with</p> <p>16 respect to a specific CDO only?</p> <p>17 A. Yes. As their role or interest in the</p> <p>18 transaction being considered, yes.</p> <p>19 Q. So you would not take into account</p> <p>20 whether an investor had other short positions away</p> <p>21 from the specific CDO you are considering?</p> <p>22 A. Not for this purpose. Not for purposes</p> <p>23 of this definition.</p> <p>24 Q. Were you familiar in the 2006-2007 time</p> <p>25 period with a phenomenon whereby some investors</p>	<p>1 I. Wagner</p> <p>2 mezzanines. I haven't seen a situation, but I</p> <p>3 haven't been able -- you know, you're not able to</p> <p>4 see all that took place behind it, as to whether</p> <p>5 and to what extent they exercised control or say</p> <p>6 over the assets in the -- that went into the CDO.</p> <p>7 I would say that -- but in those sorts of positions</p> <p>8 I would say that's not a purely short investor</p> <p>9 certainly.</p> <p>10 Q. So do you have an opinion on whether</p> <p>11 that sort of investor having input into portfolio</p> <p>12 selection had to be addition closed to long</p> <p>13 investors?</p> <p>14 A. I think I couldn't give a general</p> <p>15 answer. I think you would have to look -- if a</p> <p>16 transaction of that type was at issue, I think</p> <p>17 you'd have to look at the rights and the exercise</p> <p>18 of those rights, and how did they shape the</p> <p>19 portfolio, and what was their motivation in doing</p> <p>20 so.</p> <p>21 So I think it's a lot of the same</p> <p>22 questions as here; but I don't think the</p> <p>23 information is available to necessarily make that</p> <p>24 assessment generally.</p> <p>25 Q. What is the information you would need</p>

Ira Wagner

February 5, 2013

New York, NY

Page 166	Page 168
<p>1 I. Wagner</p> <p>2 to make a determination as to whether disclosure</p> <p>3 was required?</p> <p>4 A. I think you would have to look at --</p> <p>5 again, what were they purchasing and perhaps</p> <p>6 shorting? What rights did they have? How did they</p> <p>7 exercise those rights? What was their -- you know,</p> <p>8 to try and understand their motivation, if they had</p> <p>9 involvement in selecting the portfolio. And did</p> <p>10 they in fact exercise those rights and in what way.</p> <p>11 Did they veto anything? Did they suggest the</p> <p>12 manager buy certain securities? It's this whole</p> <p>13 range of actions and impact that you would have to</p> <p>14 look into and evaluate.</p> <p>15 Q. When you were at Bear Stearns, were you</p> <p>16 involved in making disclosure decisions based on</p> <p>17 factors such as those that you just identified?</p> <p>18 A. To the extent that I knew of things of</p> <p>19 this sort, we would certainly consider it with our</p> <p>20 counsel as to whether disclosure was necessary,</p> <p>21 based on whatever the facts of the transaction</p> <p>22 were.</p> <p>23 Q. Did Bear Stearns ask investors what</p> <p>24 their overall strategies were for purpose of</p> <p>25 determining whether disclosure was required?</p>	<p>1 I. Wagner</p> <p>2 But if someone asked that, we didn't</p> <p>3 then say, Why are you asking or what's your</p> <p>4 interest in the CDO. I mean, they were considering</p> <p>5 making a long investment.</p> <p>6 Q. Did Bear Stearns put together any CDOs</p> <p>7 in which investors made an equity investment and</p> <p>8 then took larger short positions higher up in the</p> <p>9 structure?</p> <p>10 A. I'm not aware of it, no. We never did a</p> <p>11 transaction for Magnetar, for example. And I don't</p> <p>12 think -- I'm not aware of other ones that we did</p> <p>13 that.</p> <p>14 Q. You testified a moment ago about some of</p> <p>15 the factors that would have to be considered in</p> <p>16 determining whether disclosure should be made of an</p> <p>17 investor's involvement in portfolio selection.</p> <p>18 Do you recall that?</p> <p>19 A. Yes.</p> <p>20 Q. Where were those factors set forth?</p> <p>21 Were they in a document somewhere?</p> <p>22 A. No.</p> <p>23 Q. Was there an SEC rule, to your</p> <p>24 knowledge, that described them?</p> <p>25 A. I think that it's the -- as I understand</p>
Page 167	Page 169
<p>1 I. Wagner</p> <p>2 A. Just as a matter of investment, there</p> <p>3 would not necessarily be a disclosure required,</p> <p>4 just because there is an investor in a CDO. So I</p> <p>5 don't think we would generally do that.</p> <p>6 Q. In determining whether an investor</p> <p>7 should be allowed to have input into portfolio</p> <p>8 selection, did Bear Stearns ask such investors what</p> <p>9 their overall motivation was?</p> <p>10 A. Could I hear the question again, please.</p> <p>11 (Question read)</p> <p>12 A. Well, I guess there's two things there.</p> <p>13 One is the input. I think the input that I'm aware</p> <p>14 of is what I described earlier, which is just in</p> <p>15 general the investor was considering investing in</p> <p>16 the CDO, asked to see the portfolio and perhaps</p> <p>17 asked about -- may have asked the manager about</p> <p>18 particular names, their rationale for buying them.</p> <p>19 And, again, this was not every deal that</p> <p>20 this came up. But occasionally might say, I'm not</p> <p>21 comfortable with that name. That was not a usual</p> <p>22 circumstance. But that was it.</p> <p>23 So I kind of have a hard time</p> <p>24 characterizing -- characterizing that as input as I</p> <p>25 think you intended.</p>	<p>1 I. Wagner</p> <p>2 it, it's the responsibility of the -- among the</p> <p>3 responsibility of the issuer, the underwriter,</p> <p>4 working with their counsel to consider when</p> <p>5 disclosure is required. I don't think these are</p> <p>6 specifically set forward anywhere that I know of.</p> <p>7 Q. Was Paulson the only short investor that</p> <p>8 approached Bear Stearns with a request to put</p> <p>9 together a CDO that they would short?</p> <p>10 MR. SCHULTZ: Object to form.</p> <p>11 A. No others came to my attention. I'm not</p> <p>12 aware of any.</p> <p>13 BY MR. RHYS DAVIES:</p> <p>14 Q. Do you know whether Magnetar ever</p> <p>15 approached Bear Stearns with a request to put</p> <p>16 together a CDO?</p> <p>17 A. I don't know, actually. I mean, they</p> <p>18 may have talked to a salesperson, but we never did</p> <p>19 one.</p> <p>20 Q. Do you know whether Morgan Stanley's</p> <p>21 prop desk approached Bear Stearns with a request to</p> <p>22 put together a CDO that they would intend to take a</p> <p>23 short position?</p> <p>24 A. I don't know.</p> <p>25 Q. Your opinion, if I understand it, is</p>

43 (Pages 166 to 169)

Ira Wagner

February 5, 2013

New York, NY

Page 170	Page 172
<p>1 I. Wagner</p> <p>2 that it was not typical for a purely short investor</p> <p>3 to have a direct role in portfolio selection?</p> <p>4 A. (Nodding affirmatively).</p> <p>5 Q. Are you intending in that opinion to</p> <p>6 distinguish a direct role from an indirect role?</p> <p>7 A. The only, in a sense, indirect role is</p> <p>8 just the market. Right? If you had a long,</p> <p>9 presumably there had to be a short. So a short</p> <p>10 might choose to short a certain name and might</p> <p>11 choose -- there might not be any shorts for another</p> <p>12 name. But certainly nothing beyond that.</p> <p>13 MR. RHYS DAVIES: Let's take five</p> <p>14 minutes, please.</p> <p>15 THE VIDEOGRAPHER: We are going off the</p> <p>16 record at 2:07 p.m.</p> <p>17 (Recess)</p> <p>18 THE VIDEOGRAPHER: We are back on the</p> <p>19 record at 2:15 p.m.</p> <p>20 BY MR. RHYS DAVIES:</p> <p>21 Q. Mr. Wagner, is it your view that</p> <p>22 Paulson's role in portfolio selection should have</p> <p>23 been disclosed because his purely short interest</p> <p>24 was adverse to those of the long noteholders?</p> <p>25 A. That is part of it, yes.</p>	<p>1 I. Wagner</p> <p>2 A. No. Certainly not. I don't think the</p> <p>3 underwriter is actually in the report. I'm not</p> <p>4 sure it is.</p> <p>5 Q. Before you were engaged as an expert in</p> <p>6 this matter, had you ever met Fabrice Tourre?</p> <p>7 A. No.</p> <p>8 Q. Did you see Mr. Tourre's testimony</p> <p>9 before Congress?</p> <p>10 A. I didn't watch -- I mean, I think I can</p> <p>11 picture a picture of it. I don't know that I</p> <p>12 watched it completely.</p> <p>13 Q. Did you read any press commentary on</p> <p>14 Mr. Tourre's testimony before Congress?</p> <p>15 A. Some. Some.</p> <p>16 Q. What do you recall about that press</p> <p>17 commentary?</p> <p>18 A. Probably the largest thing I remember is</p> <p>19 sort of questioning, well, you know, him versus the</p> <p>20 firm and who was testifying, and was this guy kind</p> <p>21 of -- I don't know how to put it, but sort of</p> <p>22 singled out for his role.</p> <p>23 Q. Did you form any views as to</p> <p>24 Mr. Tourre's credibility through reading this press</p> <p>25 commentary?</p>
Page 171	Page 173
<p>1 I. Wagner</p> <p>2 Q. Before we took a break, I was asking you</p> <p>3 about investors who took a long equity position and</p> <p>4 took also larger short positions higher up in the</p> <p>5 capital structures.</p> <p>6 Is it your view that an investor who is</p> <p>7 net short has an interest that is adverse to the</p> <p>8 long noteholders?</p> <p>9 A. If they're net short, they would I think</p> <p>10 make more money than -- in the poor performance</p> <p>11 than the long performance. So then that interest</p> <p>12 could be adverse.</p> <p>13 Q. Going back to your rebuttal report,</p> <p>14 which is Exhibit 2.</p> <p>15 A. Okay.</p> <p>16 Q. And the chart of CDOs on Exhibit 2.</p> <p>17 A. Okay.</p> <p>18 Q. Are any of these Bear Stearns' deals, to</p> <p>19 your knowledge?</p> <p>20 A. I'm trying to remember. We did some for</p> <p>21 Libertas. I don't remember the numbering. I think</p> <p>22 there may be a couple. I didn't look to see</p> <p>23 specifically.</p> <p>24 Q. When you went through the Wachovia</p> <p>25 report, did you exclude Bear Stearns' deals?</p>	<p>1 I. Wagner</p> <p>2 A. Neither -- not either way, no.</p> <p>3 Q. Did you form any views as to whether</p> <p>4 Mr. Tourre had been singled out in any sense?</p> <p>5 A. No. Not really, no.</p> <p>6 Q. When you were at Bear Stearns, did you</p> <p>7 have interactions with Goldman Sachs as another</p> <p>8 dealer in this market?</p> <p>9 A. Very limited.</p> <p>10 Q. Based on whatever interactions you had,</p> <p>11 did you develop any views on Goldman Sachs as an</p> <p>12 institution?</p> <p>13 A. Based on interaction, no.</p> <p>14 Q. Do you have any general views on Goldman</p> <p>15 Sachs as an institution?</p> <p>16 A. They make a lot of money. Not really.</p> <p>17 Q. Other than they make a lot of money, do</p> <p>18 you have any views on Goldman Sachs as an</p> <p>19 institution?</p> <p>20 A. Not anything in particular, no.</p> <p>21 Q. Since you left Bear in February of 2008,</p> <p>22 what have you been doing?</p> <p>23 A. I have been doing a variety of things.</p> <p>24 I do consulting work pretty continually. Probably</p> <p>25 about anywhere from half time to three-quarters</p>

44 (Pages 170 to 173)

Ira Wagner

February 5, 2013

New York, NY

Page 174	Page 176
<p>1 I. Wagner</p> <p>2 time.</p> <p>3 I've done the other expert witness work</p> <p>4 that you've seen. And I've been doing some</p> <p>5 personal interests that I have.</p> <p>6 Q. Other than the expert testimony, what</p> <p>7 sort of consulting work have you been doing?</p> <p>8 A. I have been doing consulting work mostly</p> <p>9 with a firm called Trelant. I'm a contractor with</p> <p>10 them. And I work on a variety of projects. It's</p> <p>11 related to financial institutions, not really to</p> <p>12 securitization, if you will. But a lot of it has</p> <p>13 to do with mortgage breaches, working with clients</p> <p>14 on analyzing breach claims. Things like that.</p> <p>15 Sometimes looking -- helping with</p> <p>16 reviews of fair lending, for example. Pricing and</p> <p>17 underwriting decisions and fair lending reviews by</p> <p>18 regulators. Things like that.</p> <p>19 Q. Have you also been studying?</p> <p>20 A. Studying?</p> <p>21 Q. Studying.</p> <p>22 A. Yes. As I said, I have personal</p> <p>23 interests I have been working on. I have been</p> <p>24 studying extensively photography.</p> <p>25 Q. Are you due to be studying during July</p>	<p>1 I. Wagner</p> <p>2 questions earlier today about the views you had</p> <p>3 about Paulson's deal that they presented to you</p> <p>4 back in the 2006-2007 time frame.</p> <p>5 Do you recall those questions?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Rhys Davies followed up with some</p> <p>8 questions that asked whether you thought that deal</p> <p>9 that you were approached about was proper, whether</p> <p>10 it -- I think he used the word "propriety," and</p> <p>11 whether you had negative views.</p> <p>12 Do you recall those questions?</p> <p>13 A. Yes.</p> <p>14 Q. In the 2006-2007 time frame when you met</p> <p>15 with Paulson &amp; Company and declined to get involved</p> <p>16 in that deal, did you consider what they were doing</p> <p>17 to be improper?</p> <p>18 A. No.</p> <p>19 Q. Did you have negative views about it at</p> <p>20 that time other than that you didn't want to get</p> <p>21 involved in it?</p> <p>22 MR. RHYS DAVIES: Objection.</p> <p>23 A. No. No. My principal view was that</p> <p>24 there was a conflict that probably needed</p> <p>25 disclosure. And I think for our franchise, we</p>
Page 175	Page 177
<p>1 I. Wagner</p> <p>2 and August of this year?</p> <p>3 A. There is a class that I have scheduled</p> <p>4 in -- somewhere late in July into the beginning of</p> <p>5 August.</p> <p>6 Q. And this is the photography course?</p> <p>7 A. Yes.</p> <p>8 MR. RHYS DAVIES: No further questions.</p> <p>9 Thank you.</p> <p>10 MR. SCHULTZ: Mr. Wagner, I have a</p> <p>11 couple of follow-up questions from some of</p> <p>12 what you were asked earlier.</p> <p>13 EXAMINATION</p> <p>14 BY MR. SCHULTZ:</p> <p>15 Q. In your report which Mr. Rhys Davies</p> <p>16 marked as Exhibit 1, in paragraph 92 you list</p> <p>17 matters in which you have submitted expert</p> <p>18 testimony. And one of them is LaSalle Bank versus</p> <p>19 Goldman Sachs International.</p> <p>20 A. Yes.</p> <p>21 Q. Which of the two parties did you submit</p> <p>22 a report for in that case, LaSalle Bank or Goldman</p> <p>23 Sachs?</p> <p>24 A. It was for Goldman.</p> <p>25 Q. Mr. Rhys Davies asked you a number of</p>	<p>1 I. Wagner</p> <p>2 didn't want to get involved.</p> <p>3 MR. SCHULTZ: Those are the only</p> <p>4 questions we have.</p> <p>5 One second.</p> <p>6 (Pause in the proceedings)</p> <p>7 MR. SCHULTZ: We don't have any other</p> <p>8 questions.</p> <p>9 FURTHER EXAMINATION</p> <p>10 BY MR. RHYS DAVIES:</p> <p>11 Q. The expert testimony that you submitted</p> <p>12 in the LaSalle Bank against Goldman Sachs</p> <p>13 International case, what was the topic of that</p> <p>14 expert testimony?</p> <p>15 A. I think that had to do with the specific</p> <p>16 terms of the indenture for that transaction, how</p> <p>17 that transaction operated. And there was an</p> <p>18 investor who thought, I believe, as I remember,</p> <p>19 that it should operate differently, and it wasn't</p> <p>20 -- the way they thought it should work was not what</p> <p>21 the indenture said. So that was largely what that</p> <p>22 was about, as I remember.</p> <p>23 Q. It was nothing to do with whether it was</p> <p>24 typical for a purely short investor to play a</p> <p>25 direct role in portfolio selection?</p>

45 (Pages 174 to 177)

Ira Wagner

February 5, 2013

New York, NY

Page 178	Page 180
<p>1 I. Wagner</p> <p>2 A. No. No, it was not.</p> <p>3 MR. RHYS DAVIES: No further questions.</p> <p>4 Thank you.</p> <p>5 THE VIDEOGRAPHER: This completes the</p> <p>6 deposition. We are going off the record at</p> <p>7 2:25 p.m.</p> <p>8 (Proceedings concluded at 2:25 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF NEW YORK )</p> <p>4 ) ss.</p> <p>5 COUNTY OF NEW YORK)</p> <p>6</p> <p>7 I, Christina Diaz, a Certified Realtime</p> <p>8 and Registered Merit Reporter and Notary Public</p> <p>9 within and for the State of New York, do hereby</p> <p>10 certify:</p> <p>11 That IRA WAGNER, the witness whose</p> <p>12 deposition is hereinbefore set forth, was duly</p> <p>13 sworn by me and that such deposition is a true</p> <p>14 record of the testimony given by such witness.</p> <p>15 I further certify that I am not related</p> <p>16 to any of the parties to this action by blood or</p> <p>17 marriage and that I am in no way interested in the</p> <p>18 outcome of this matter.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 _____</p> <p>23 CHRISTINA DIAZ, CRR, RMR, CSR, CLR</p> <p>24</p> <p>25</p>
Page 179	
<p>1 CERTIFICATE OF DEPONENT</p> <p>2</p> <p>3 I hereby certify that I have read and examined the</p> <p>4 foregoing transcript, and the same is a true and</p> <p>5 accurate record of the testimony given by me.</p> <p>6 Any additions or corrections that I feel are</p> <p>7 necessary, I will attach on a separate sheet of</p> <p>8 paper to the original transcript.</p> <p>9</p> <p>10 _____</p> <p>11 Signature of Deponent</p> <p>12</p> <p>13 I hereby certify that the individual representing</p> <p>14 himself/herself to be the above-named individual,</p> <p>15 appeared before me this ____ day of _____,</p> <p>16 2013, and executed the above certificate in my</p> <p>17 presence.</p> <p>18</p> <p>19 _____</p> <p>20 NOTARY PUBLIC IN AND FOR</p> <p>21</p> <p>22 _____</p> <p>23 County Name</p> <p>24</p> <p>25 MY COMMISSION EXPIRES:</p>	

<b>A</b>	73:13 75:19	<b>additional</b> 30:19	89:15 129:4,19	<b>anybody</b> 65:19
<b>AA</b> 45:7	85:20,21 88:22	<b>additions</b> 179:6	157:8,8	<b>anyway</b> 47:20
<b>AAA</b> 45:7	99:23 100:4,22	<b>address</b> 44:3	<b>Alderson</b> 10:20	<b>Apart</b> 154:8
<b>AAA-rated</b>	102:25 106:8	87:20 162:16	10:22	<b>apologies</b> 145:23
51:21	109:2 110:10	<b>addressed</b> 44:5	<b>allegation</b> 96:18	<b>apologize</b> 146:8
<b>Abacus</b> 5:7 31:19	127:13 128:6	125:23	96:23 97:4,6	<b>appear</b> 80:17
32:16 33:5 35:2	129:23 134:2,7	<b>adequacy</b> 143:4	<b>alleged</b> 61:13	<b>appeared</b> 48:9
35:9 39:25 40:9	145:2,7 147:18	<b>administrative</b>	96:12	179:15
40:16,23 42:11	148:14,23	92:3 117:18	<b>Allen</b> 2:5 3:11	<b>appearing</b>
42:19,24 43:6	149:17 154:17	<b>adverse</b> 170:24	10:16 11:2,3,5	126:14
43:10,12 44:21	155:8	171:7,12	65:3	<b>appears</b> 34:18
45:10,12,17	<b>accept</b> 131:19	<b>Advisors</b> 76:11	<b>allowed</b> 96:16	38:10 105:11
47:7,11 48:12	<b>acceptable</b> 34:2	77:13	123:20 167:7	<b>approach</b> 44:14
48:20 49:5,18	<b>access</b> 137:15	<b>affiliates</b> 92:23	<b>amended</b> 31:11	63:8 155:3
50:19 51:5,23	<b>account</b> 138:19	<b>affirmatively</b>	31:15	159:22
54:5,10 55:4	139:13 147:24	54:18 105:10	<b>America</b> 6:18	<b>approached</b> 55:3
60:16 61:14	148:16 149:23	118:4 155:9	15:4 95:20 96:3	169:8,15,21
63:18 99:10	163:19	170:4	<b>Americas</b> 2:6	176:9
103:17 112:16	<b>accumulation</b>	<b>AFTERNOON</b>	3:13 10:17	<b>appropriate</b>
122:9,14 128:5	106:9	147:2	<b>amount</b> 21:21	68:23
128:9,20	<b>accurate</b> 31:16	<b>agencies</b> 24:15	45:13 46:9,15	<b>approval</b> 78:6
129:15 130:17	98:9,13 109:19	24:24 25:4	47:11 106:6	99:23 100:5
131:9 133:20	179:5	<b>agency</b> 45:23	109:12 110:9	103:2 106:8
134:8 135:24	<b>achieve</b> 20:12	<b>agent</b> 33:4	133:21 164:15	109:2 110:10
143:25	130:24	100:13 126:7	<b>amounts</b> 16:3	120:15 121:6,7
<b>ability</b> 101:5	<b>acquired</b> 92:25	129:6	<b>analyses</b> 41:25	150:6
126:18 142:24	<b>action</b> 101:14	<b>ago</b> 36:5,12	<b>analysis</b> 25:3,4	<b>approvals</b>
160:16	180:16	62:18 98:8	42:10,15,18	131:25 132:4
<b>able</b> 99:17	<b>actions</b> 53:4	121:18 168:14	43:3,14,16,18	<b>approve</b> 118:11
140:19 165:3,3	166:13	<b>agree</b> 15:16	43:19,21,25	121:23 123:24
<b>ABN</b> 134:4,5	<b>active</b> 21:13,14	17:13,15 37:4	44:10,16 45:11	160:16
<b>above-named</b>	135:2	61:18 68:20	47:18 49:3,21	<b>approved</b> 108:6
179:14	<b>activities</b> 127:21	105:11 137:12	52:3 63:3 89:21	108:11 109:14
<b>ABS</b> 17:19 78:13	<b>AC1</b> 35:4,4	141:22 142:10	132:18 148:14	109:24 120:12
78:21,24 79:3	37:20,24 38:2,3	<b>agreed</b> 9:3,9,14	149:7,18	121:10,13
85:5 87:10 88:5	38:5,7 40:19,25	33:4 76:25	<b>analytics</b> 84:10	152:2
90:3,16 91:14	41:5 129:15	111:16 129:5	<b>analyzing</b> 174:14	<b>approximately</b>
112:23 113:22	<b>Adam</b> 115:7	<b>agreeing</b> 75:16	<b>Andrew</b> 3:15	10:18 46:5
117:9 119:15	<b>add</b> 67:3,25	<b>agreement</b> 27:25	10:25 120:4	<b>April</b> 53:25 61:5
122:21	<b>added</b> 125:11	110:13 116:12	<b>answer</b> 22:12	61:16,24 62:11
<b>absence</b> 125:4	<b>addition</b> 14:4	<b>Airlie</b> 75:5,6,9	131:21 132:6	62:16 63:23
126:5	30:22 72:12	<b>Alan</b> 33:19 84:23	139:11 165:15	<b>arbitration</b> 53:6
<b>ACA's</b> 38:5	165:12	86:8,11 88:19	<b>answers</b> 131:17	53:10,11,20

<b>arbitrations</b> 53:4	111:9 120:19	<b>Attorney</b> 52:15	142:14 147:9	136:15
<b>area</b> 19:3 73:2	120:25 123:24	<b>attorneys</b> 3:4,12	170:18 171:13	<b>Bates</b> 74:16 76:4
<b>argue</b> 103:16	128:13 136:18	27:9,20,21 28:4	176:4	87:4 91:4,7
<b>argument</b> 61:13	160:16 165:6	79:5	<b>backed</b> 45:7	104:24 107:15
<b>arising</b> 53:4	<b>assigned</b> 24:12	<b>atypical</b> 135:22	<b>Bad</b> 5:8 63:18	119:9 145:21
<b>Arizona</b> 137:23	153:11	136:5	<b>Bajaj</b> 41:25	145:24 147:15
<b>ARM</b> 72:24	<b>assume</b> 50:25	<b>audit</b> 27:11	47:17 63:2	<b>bearing</b> 4:20
<b>ARM's</b> 137:7	51:19	<b>August</b> 175:2,5	<b>balance</b> 96:25	5:13,16,21 6:5
<b>Arrange</b> 24:16	<b>assumed</b> 31:14	<b>Ava</b> 88:19	150:5 162:4	6:9,14,22 7:7
<b>arrived</b> 130:21	<b>assumption</b>	<b>available</b> 26:20	<b>bank</b> 13:5,9	7:12,16,22 8:5
<b>arriving</b> 33:8	51:22	46:13 50:7 65:5	14:18,19 15:4	8:9 34:12 74:12
<b>article</b> 5:7 63:9	<b>Assurance</b> 6:17	104:12 165:23	17:18,18 75:4	75:23 79:16
63:10,18,23	95:19 96:2	<b>Avenue</b> 2:5 3:13	104:8 109:21	81:7 86:23
<b>articles</b> 63:13	<b>Atlantic</b> 51:13	10:16 87:22	175:18,22	90:23 104:17
<b>ARUN</b> 3:21	<b>attach</b> 179:7	<b>average</b> 45:13	177:12	107:10 113:5
<b>asked</b> 19:21	<b>attached</b> 4:12	50:3,14	<b>banker</b> 12:2	116:14 118:18
37:20 38:11	<b>attaching</b> 117:8	<b>aware</b> 17:7,10	19:13 26:20	145:15 147:6
42:14 59:8	<b>attachment</b> 5:16	72:19 95:10	74:23 113:18	<b>Bears</b> 12:5
65:12 77:6	5:21 6:5,9,14	97:23 167:13	<b>bankers</b> 23:24	<b>began</b> 19:9
106:17,24	6:22 7:12,16,21	168:10,12	24:6,9,12 26:13	<b>beginning</b> 4:18
126:17,19	75:23 76:3,7	169:12	26:15 27:2	5:19 6:3,12
136:6,23	79:16 81:7 82:3	<b>awesome</b> 131:10	76:19 79:4 88:7	7:10,19,21
138:13 147:18	83:17 86:23	<b>a.m</b> 2:2 10:18	94:23 99:6	19:10 34:12
167:16,17,17	90:23 104:17	22:7,10 34:19	<b>banking</b> 13:7	48:4 66:16
168:2 175:12	113:5,10,20	35:12 64:15,22	27:16 80:6	67:14 79:15,21
175:25 176:8	116:14 118:18	102:15,19	81:22 88:11	81:6,12 86:5
<b>asking</b> 69:2,3	<b>attachments</b>	127:7	<b>Barbara</b> 88:17	87:4 90:22
77:21 78:9	91:5		<b>Barcelona</b> 78:14	97:21 104:24
102:21 121:6	<b>attempt</b> 97:7	<b>B</b>	78:19,22 85:5	107:15 113:4
146:3 161:9	<b>attend</b> 55:12	<b>b</b> 4:11 5:1 6:1 7:1	<b>Barclays</b> 17:18	116:19 118:17
168:3 171:2	78:13	8:1 105:22	<b>Barclay's</b> 15:17	118:18 175:4
<b>aspects</b> 59:6	<b>attended</b> 78:21	110:7	15:19	<b>begins</b> 35:12
<b>assemble</b> 109:11	79:2,4 86:21	<b>Baa</b> 49:9,16	<b>base</b> 157:25	37:19 76:4,7
<b>assessing</b> 163:15	90:5,10	<b>Baa1</b> 49:10	<b>based</b> 51:21 65:4	91:4 97:22
<b>assessment</b>	<b>attending</b> 85:16	<b>Baa2</b> 42:24 50:2	71:2,4 141:23	105:22 113:10
148:8 149:2	86:16 88:2	52:6	143:15 158:10	148:11 159:18
165:24	89:23	<b>Baa3</b> 49:10	164:14 166:16	<b>behalf</b> 115:24
<b>asset</b> 7:3 88:22	<b>attention</b> 50:8	<b>back</b> 22:9,12	166:21 173:10	<b>belief</b> 149:20
107:8 149:3	51:11 60:13	23:21 40:3	173:13	<b>believe</b> 12:14,24
159:24	63:11 64:4 76:6	64:21 99:7	<b>basis</b> 26:23	13:17 28:13
<b>assets</b> 45:20	76:17 79:23	102:18 109:6	100:21 101:22	31:23 32:3
47:14 61:22	91:9 107:22	110:3 111:14	111:6 132:20	33:22 40:17,19
67:18 97:7	113:13 169:11	124:8 127:9	134:24 135:7	46:3 55:21 73:5

73:18,21 74:4 75:7 84:22 93:10 99:12 122:3 129:16 137:21 150:17 157:23 177:18 <b>benefit</b> 141:14 <b>best</b> 142:24 <b>beyond</b> 170:12 <b>bias</b> 141:2,10,11 141:23 142:2 <b>bigger</b> 158:19 <b>Bill</b> 88:19 90:8 <b>bit</b> 54:8 <b>blood</b> 180:16 <b>Blue</b> 88:3 89:23 <b>board</b> 73:7,10 <b>bond</b> 27:25 118:12 121:7 121:23 <b>bonds</b> 128:21 <b>bonus</b> 28:9,14,23 29:15 <b>book</b> 81:19 82:17 85:3,19 128:5 <b>borrowers</b> 137:7 <b>bottom</b> 35:11 60:14 76:8 79:24 84:24 93:13 106:3 149:13 <b>bought</b> 22:16,23 37:23 <b>box</b> 111:3 <b>Brad</b> 56:5 <b>Brandon</b> 3:17 11:3 <b>breach</b> 174:14 <b>breaches</b> 174:13 <b>break</b> 22:4 102:10 146:10 146:16 147:17 171:2	<b>Bridget</b> 3:9 11:12 <b>broadly</b> 99:18 <b>broke</b> 102:21 <b>broker-dealer</b> 13:6 <b>Brothers</b> 15:2 <b>bubbles</b> 137:10 137:18,20,24 <b>bulletproof</b> 130:25 <b>business</b> 14:5 17:13 73:2 75:20 77:3,10 88:23,24,25 154:10 <b>buy</b> 161:7 166:12 <b>buyer</b> 122:20 161:21 <b>buying</b> 58:13 164:18 167:18 <hr/> <b>C</b> <hr/> <b>C</b> 3:1 180:1,1 <b>calendar</b> 151:7 152:10,14 <b>California</b> 137:22 <b>call</b> 53:2 54:7,8,9 <b>called</b> 25:10 45:5 84:11 87:9 88:3 114:16 126:15 132:19 174:9 <b>Calyon</b> 15:21,22 <b>candidate</b> 149:7 <b>capabilities</b> 85:12,20,22 <b>capital</b> 76:9 84:18 101:12 133:23 164:15 171:5 <b>caption</b> 96:2 <b>Cards</b> 126:15	<b>career</b> 143:16 <b>carefully</b> 140:24 141:9 <b>Carol</b> 115:8 <b>carrying</b> 26:13 <b>case</b> 17:18 29:21 29:24 31:3 41:15,18 48:17 54:13 86:14 96:2 100:13 101:25 112:13 115:23 127:25 143:6 175:22 177:13 <b>cash</b> 20:24 21:4 21:6,11,11,16 25:3,6 27:12 110:20 111:7,9 129:24 <b>cash/synthetic</b> 110:25 <b>catch</b> 48:10 <b>category</b> 49:9 50:4 163:3,11 <b>cause</b> 40:8 <b>caused</b> 13:19 39:6 62:23 <b>cautious</b> 148:12 <b>CDO</b> 7:3 14:5,8 15:9,22 16:11 18:10 19:12,13 20:12 23:11 24:12,14 25:19 27:5 33:12,16 44:12 45:21 48:22,23 50:8,9 50:12,18,19 51:4,13,16,22 56:13,15 57:14 57:16 58:3,13 63:5 69:12,17 71:25 72:8,12 74:23 75:5,19	76:9 77:2,10 82:22 83:17,24 84:9,10,13 86:18 87:9 88:6 88:24,25 90:16 107:8 112:23 113:22 115:9 122:21 123:8 123:12,16,21 125:3,19 128:20 129:24 135:24 143:14 143:16 152:7 159:24 160:18 161:16,18,18 162:6,13,15,20 162:23,24 163:16,21 164:3,14,15 165:6 167:4,16 168:4 169:9,16 169:22 <b>CDOs</b> 12:4,12 12:14,16,17,20 14:21,23 16:4 17:12,20 18:2 18:12,16,20,24 19:7,22 20:6,16 20:24 21:4,5,6 21:8,10,16,22 22:17,23 23:12 23:15 24:21 25:14,17,17 26:9 33:14 43:11 44:13,22 44:25 45:19 46:16 48:13,22 49:4,18,23 51:12 52:7 84:12 97:24 98:2,4 112:20 125:9,10 126:18 150:9	152:24 153:4 159:20 160:20 168:6 171:16 <b>CDS</b> 18:22,23 20:8,12,15,19 114:25 115:3 123:8 <b>celebrate</b> 86:17 87:9 89:24 <b>celebrated</b> 90:17 <b>CEO</b> 84:23 <b>certain</b> 20:10 92:3 117:17 121:7 129:6 137:9 166:12 170:10 <b>certainly</b> 14:7,9 15:20 16:9,14 16:15 21:3 24:8 36:20 39:12 41:11 47:23 59:5 61:18 69:16 102:11 120:9 125:8,12 137:24 143:8 145:11 150:4 153:14 158:8 158:17 164:24 165:9 166:19 170:12 172:2 <b>certificate</b> 179:1 179:16 <b>certification</b> 9:5 <b>Certified</b> 2:7 180:7 <b>certify</b> 8:16 179:3,13 180:10,15 <b>cetera</b> 13:8 37:18 <b>chain</b> 34:6,10,23 35:2,11,22 40:4 40:9
---	---	---	---	---

<b>chains</b> 40:20,22	14:11	94:2 96:15,17	<b>Commitments</b>	135:5
<b>chance</b> 119:5	<b>civil</b> 53:4	97:24 106:7,9	7:5 107:9	<b>compromised</b>
<b>changed</b> 16:10	<b>claim</b> 53:13,16	110:10,11	<b>committee</b> 7:6	127:13 132:13
139:3	<b>claims</b> 174:14	112:7,9 116:11	101:12 107:10	134:10
<b>character</b> 18:20	<b>class</b> 159:24	117:17,19	<b>communication</b>	<b>computer</b> 152:12
<b>characteristics</b>	175:3	118:3,6,7	33:13 153:15	152:15
24:23 43:12	<b>classes</b> 25:17	121:18,19	<b>company</b> 13:24	<b>concentrations</b>
136:21 137:13	<b>classify</b> 25:23	123:15,19	33:5 91:25	137:9
152:3	<b>clear</b> 66:8 100:7	129:23 136:9	117:16 176:15	<b>concern</b> 145:6
<b>characterize</b>	100:18 101:3	152:25 153:5	<b>comparable</b> 49:5	161:11
28:16 42:4	134:2 146:14	154:25 159:25	50:18 51:23	<b>concerned</b>
145:6	<b>clearly</b> 35:4	160:5	<b>compare</b> 42:23	144:25 148:14
<b>characterizing</b>	135:5 163:4	<b>collateralized</b>	44:21 45:17	<b>concerning</b> 52:10
167:24,24	<b>clients</b> 79:11	11:24 12:17,21	48:20	52:19
<b>charging</b> 60:15	80:11 174:13	18:17,24 19:23	<b>comparing</b> 43:15	<b>conclude</b> 33:3
<b>chart</b> 171:16	<b>CLO</b> 7:4 71:25	20:25 22:24	63:4	115:18
<b>Chelsea</b> 87:21	72:13 81:19	23:12 46:17	<b>comparison</b> 43:8	<b>concluded</b> 70:3
<b>Chepiga</b> 3:16	90:4 102:5	<b>colleagues</b> 59:17	43:8,9 44:25	178:8
11:5,5	103:7,14,20,23	59:23 71:2	45:16 49:15	<b>concludes</b>
<b>chief</b> 89:16	105:12 107:9	<b>combined</b> 21:22	51:4	102:13 146:17
<b>Choi</b> 80:2,4	110:20 112:15	<b>come</b> 5:8 21:8	<b>compensation</b>	<b>concluding</b> 116:5
<b>choose</b> 56:14	<b>CLOs</b> 104:11	63:10,19	28:17,18	<b>conclusion</b> 33:22
57:15 170:10	109:8 111:13	154:20 157:14	<b>competence</b>	48:11,16,18
170:11	112:19 150:9	158:7	154:24	70:22 112:4
<b>choosing</b> 47:5	152:24 153:5	<b>comes</b> 33:21	<b>compilation</b>	127:24 136:13
136:9 138:14	<b>close</b> 72:16	<b>comfortable</b>	118:23	139:12
<b>Christian</b> 3:7	<b>closed</b> 160:21	167:21	<b>complaint</b> 6:19	<b>conditions</b> 20:21
11:7	165:12	<b>coming</b> 31:3	31:11,11,15,15	<b>conduct</b> 42:14
<b>Christina</b> 1:25	<b>closing</b> 86:17	108:2 147:23	95:21,25 96:6	<b>conducted</b> 42:10
2:6 10:22 180:7	87:9 89:24	148:17	96:13 97:14	42:17
180:22	90:16 120:20	<b>commendable</b>	<b>complete</b> 22:17	<b>conference</b>
<b>CIFG</b> 6:17 95:19	121:3 154:5,8	149:19	23:2 133:9,16	78:13,20,24,25
96:2 97:23	157:15 158:9	<b>comment</b> 24:19	143:7	85:5 154:4,6
<b>circular</b> 28:4,5,6	<b>closings</b> 86:19	94:24 100:21	<b>completed</b> 32:17	<b>conferences</b>
91:7,11,14 92:8	<b>CLR</b> 1:25 180:22	<b>commentary</b>	<b>completely</b>	78:22 85:9
93:13 94:23	<b>CNBC</b> 126:15	172:13,17,25	172:12	<b>confidence</b> 38:4
98:8 116:12	<b>collateral</b> 18:22	<b>comments</b>	<b>completes</b> 178:5	39:16
117:9,12,24	20:18 24:22	144:10 147:24	<b>completion</b> 24:11	<b>confidential</b> 82:6
121:17 124:9	27:7,25 32:17	148:21	<b>compliance</b>	82:13 111:17
124:11	34:2 49:12,14	<b>Commission</b> 1:4	71:13	111:20
<b>circumstance</b>	62:7 72:2,9,14	3:3 10:12 11:9	<b>components</b>	<b>confirmed</b>
112:3 167:22	79:5 92:2,5,11	11:11,13 17:9	104:15	136:24
<b>Citigroup</b> 14:10	92:14,19,24	53:24 179:25	<b>composition</b>	<b>confirming</b> 27:12

<b>conflict</b> 58:25 62:8 69:8 176:24 <b>Congress</b> 172:9 172:14 <b>connection</b> 19:6 19:22 60:16 69:22 75:19 77:9,16 106:13 132:8 135:14 <b>conscious</b> 148:13 <b>consensus</b> 58:22 70:14,17 <b>consider</b> 15:24 32:16 33:10 37:20 38:11 39:13,21 44:4 58:12 120:16 125:7,18 126:3 132:23 140:24 141:9 158:21 166:19 169:4 176:16 <b>considered</b> 29:20 30:20 31:2 33:8 33:11,12 49:7 71:14 125:11 129:19 130:7 133:2,4 138:2 163:18 168:15 <b>considering</b> 119:14 163:21 167:15 168:4 <b>consisted</b> 51:20 <b>consistent</b> 62:3 67:6 68:3,7 127:2 142:11 <b>consists</b> 60:8 <b>constraints</b> 24:22 <b>consulting</b> 3:21 173:24 174:7,8 <b>contact</b> 26:23	27:2 153:9,12 156:17 <b>contacted</b> 29:23 77:21 98:17 <b>contained</b> 128:20 <b>contention</b> 61:18 <b>context</b> 66:13 109:7 122:6 154:4,5 <b>contingent</b> 33:25 <b>continually</b> 173:24 <b>continue</b> 148:25 <b>continued</b> 5:1 6:1 7:1 8:1 12:15 147:11 <b>continues</b> 113:11 <b>continuing</b> 26:3 40:18 104:25 <b>contractor</b> 174:9 <b>control</b> 165:5 <b>converge</b> 47:14 <b>conversation</b> 55:10 156:20 <b>converse</b> 79:10 <b>coordinate</b> 27:18 <b>coordinating</b> 25:19 <b>copied</b> 74:19 79:25 <b>copies</b> 23:17 <b>copy</b> 95:24 145:19 <b>core</b> 17:12 <b>corporate</b> 18:11 <b>correct</b> 24:2 30:19,23 32:19 35:22 36:17 39:16,19,21 40:15,17 41:22 42:2 44:22 45:19,24 57:18 61:9 70:8 73:14	74:20 83:5,21 85:2 92:16 93:7 99:5,11 103:18 104:9 105:5 106:14 108:21 110:21 114:4 114:19 119:18 128:2 129:7,11 129:20 130:8 136:12 138:3 138:17 140:2,7 149:2 152:8,25 159:7 164:8 <b>corrections</b> 179:6 <b>correctly</b> 34:16 44:20 61:25 62:14 112:7 129:3 163:14 <b>counsel</b> 9:4 10:23 27:10,11 27:11 71:20 94:22 95:3 114:9,12,14,16 115:11,20 166:20 169:4 <b>counterparty</b> 20:16 123:8 <b>County</b> 179:23 180:5 <b>couple</b> 86:9 91:20 160:12 171:22 175:11 <b>course</b> 27:7 121:8 175:6 <b>court</b> 1:1 9:17 10:13,21 11:15 95:25 <b>cover</b> 37:8,12 60:8 93:10,12 <b>coverage</b> 124:14 124:17 125:4 126:5	<b>covered</b> 56:23 <b>covers</b> 38:8 <b>Cox</b> 41:25 63:3 <b>co-head</b> 16:24 <b>create</b> 56:13 57:14 139:15 <b>credibility</b> 156:24 157:19 158:13 172:24 <b>credible</b> 157:6 <b>credit</b> 14:16,17 20:11 89:20 108:5 128:6 131:24 132:4 149:6 160:24 <b>crediting</b> 129:3 <b>credits</b> 108:12 161:9 <b>crisis</b> 5:4 13:17 13:17,20,23 17:8 53:23 60:5 <b>criteria</b> 147:22 <b>critical</b> 100:15 <b>CRR</b> 1:25 180:22 <b>CSR</b> 1:25 180:22 <b>current</b> 31:25 41:17 86:13 <b>CV</b> 23:20 <hr/> <b>D</b> <hr/> <b>D</b> 3:17 4:1 <b>data</b> 148:12 <b>date</b> 8:4,8 45:22 46:2,4 47:6 54:3 61:8,10 145:14 147:5 <b>dated</b> 4:19 5:11 5:12,15,20 6:4 6:8,13,21 7:11 7:15,20 23:17 23:18 34:12 40:5 63:23	64:18 74:11 75:22 76:13 79:15 81:6 86:22 90:22 104:16 113:4 116:13 118:17 145:19 <b>dating</b> 40:23 <b>David</b> 72:20 <b>day</b> 64:5 179:15 <b>days</b> 54:13 <b>day-to-day</b> 24:13 <b>DC</b> 3:6 <b>deal</b> 5:8 21:20 37:24 59:6 63:18 85:13 90:3 93:6 103:22 167:19 176:3,8,16 <b>dealer</b> 14:8,11 14:19 15:20 20:17,18,19 161:19,20 162:3,4 173:8 <b>dealers</b> 14:5,10 15:8,13 76:19 109:11 124:6 162:2 <b>dealings</b> 157:21 <b>deals</b> 21:24 45:5 45:6,6 47:13 49:7,11,13 52:3 66:20,21 80:25 153:22,24 171:18,25 <b>debt</b> 11:25 76:11 77:13 92:5,19 92:24 117:20 118:8 121:19 <b>December</b> 4:15 10:3 23:17 <b>decided</b> 58:20 70:7
---	---	--	---	---

<b>decision</b> 8:4,8 58:24 70:13 143:20 145:14 147:5 148:18 <b>decisions</b> 94:17 166:16 174:17 <b>decision-making</b> 14:2 <b>declaration</b> 4:22 32:4,11 33:21 36:5,7,11,15 36:24 37:5,8 38:19 39:7,10 39:17,19,23 <b>declined</b> 58:16 176:15 <b>Defendant</b> 1:8 3:12 <b>defendant's</b> 46:7 <b>deferred</b> 28:17 28:18 <b>defined</b> 91:25 92:5,15 93:15 117:16,20 <b>definitely</b> 29:9 <b>definition</b> 163:23 <b>degree</b> 157:20 <b>Del</b> 87:8,12,13 87:19 90:17 <b>Delaware</b> 91:24 117:15 <b>demand</b> 109:9 <b>demonstrating</b> 36:15,25 <b>Dennis</b> 88:19 89:18 <b>department</b> 16:25 71:13 <b>depended</b> 153:18 <b>Deponent</b> 179:1 179:11 <b>deposition</b> 1:14 2:4 9:6,15	10:10,15 31:24 35:25 41:20 106:15 107:18 108:9 129:10 129:19 130:7 131:5,6,16 137:4 138:3 139:21 140:14 156:6,10 178:6 180:12,13 <b>depositions</b> 30:12 <b>derived</b> 139:8 144:19 <b>deriving</b> 101:11 101:24 <b>described</b> 26:14 26:25 44:9 57:22 61:12 66:23 167:14 168:24 <b>describes</b> 60:20 100:25 128:5 <b>describing</b> 65:18 67:7 <b>description</b> 4:13 5:2 6:2 7:2 8:2 119:17 <b>desk</b> 56:21 169:21 <b>detail</b> 102:8 112:12 <b>details</b> 109:16 <b>deteriorating</b> 48:6 <b>determination</b> 166:2 <b>determine</b> 49:4 49:21 <b>determined</b> 70:10 <b>determining</b> 166:25 167:6	168:16 <b>Deutsche</b> 14:18 14:19 <b>develop</b> 24:25 173:11 <b>developed</b> 94:25 142:12 <b>dialogue</b> 25:11 26:3,8 40:18 101:16 <b>Diaz</b> 1:25 2:7 10:22 180:7,22 <b>differences</b> 103:19 112:14 <b>different</b> 25:15 26:6,18 79:2,9 80:25 103:17 112:19 122:9 122:13,16 133:22,23 144:9 160:13 161:25 <b>differently</b> 177:19 <b>dinner</b> 86:16 87:8,13,15 89:22 90:16 154:5 157:13 157:15 158:9 <b>dinners</b> 86:19 154:8 <b>direct</b> 32:20 134:3 139:10 159:6 170:3,6 177:25 <b>directing</b> 35:10 50:8 51:11 60:13 76:6,17 79:23 84:16 91:9 107:22 113:13 148:4 <b>directly</b> 25:20 <b>director</b> 12:3,6,7	28:7 41:21 88:22 89:5 <b>directors</b> 28:13 <b>disagree</b> 43:3 133:11,14 <b>disapprove</b> 160:16 <b>disclose</b> 94:3 109:19 141:5 <b>disclosed</b> 59:2 69:9,22 70:5 125:16,24 128:18 161:14 161:23 170:23 <b>disclosure</b> 36:16 36:25 59:4 93:19,25 98:7 99:9,21 100:2,8 100:12,19 102:23 121:16 122:3 125:25 142:22,22,23 143:4,6 158:22 166:2,16,20,25 167:3 168:16 169:5 176:25 <b>discuss</b> 81:4 103:9 <b>discussed</b> 69:25 <b>discussing</b> 58:4 58:13 62:18 103:5 <b>discussion</b> 58:2,7 58:11 59:16,20 69:19 70:14 93:22 99:14 148:23 157:25 <b>discussions</b> 59:22 161:13 <b>distinguish</b> 46:10 170:6 <b>distress</b> 46:9 48:5	<b>distributing</b> 124:21 <b>distribution</b> 23:25 24:6 25:8 25:10,13,23 26:5,14,16,21 84:14 <b>District</b> 1:1,2 10:13,14 87:21 <b>document</b> 60:24 65:3 66:15 74:9 74:15 76:15 78:6 79:20 81:11,16 87:3 88:9 91:3,7 96:10 104:23 106:19 107:14 107:17 116:19 119:3,6,9 122:4 144:6 145:12 168:21 <b>documents</b> 24:18 27:22,23,24 28:3 29:19 30:19,24 31:3,9 94:18 95:4 115:18,20,23 116:8,9,10 118:23 120:6 129:18 130:6 <b>doing</b> 26:10 71:14 75:21 84:12 109:8 113:18 134:15 164:12 165:19 173:22,23 174:4,7,8 176:16 <b>dollars</b> 28:25 29:3 <b>downgraded</b> 45:17,22,23 47:15 48:6,8,12
---	--	---	---	--

52:7 <b>downgrades</b> 45:13 <b>dozens</b> 18:12 21:3 46:12 <b>Dr</b> 41:25,25 47:17 63:3 <b>draft</b> 28:4 105:12 105:18 110:4 <b>drafters</b> 27:22 <b>draw</b> 48:16 <b>drawing</b> 127:24 <b>Drexel</b> 12:14,17 <b>Duda</b> 115:7 <b>due</b> 20:11 174:25 <b>duly</b> 11:18 180:12 <b>Dunn</b> 88:17 119:10,13 <b>D.H</b> 3:7	<b>Eichel</b> 5:10 16:20 16:22 17:7,11 57:4 64:18,25 65:13,17 66:16 67:15 115:2,4 <b>Eichel's</b> 65:9 <b>either</b> 66:19 86:5 141:5,7 153:23 173:2 <b>elaborated</b> 100:24 <b>element</b> 38:14 <b>eligible</b> 92:19,24 118:8 121:20 <b>empirical</b> 41:25 42:10,17 <b>employee</b> 31:25 41:18 73:9 <b>employees</b> 86:14 88:16 <b>encouraged</b> 61:21 <b>ended</b> 160:14 <b>ends</b> 76:5 <b>engaged</b> 172:5 <b>engagement</b> 105:12,18 106:20 110:4 <b>enhance</b> 101:5 <b>enlightening</b> 67:11 <b>entered</b> 13:16 <b>entering</b> 20:20 <b>entire</b> 56:14 57:15 <b>entirely</b> 18:23,24 <b>entitled</b> 5:7 63:18 <b>entity</b> 73:21 77:12 133:19 <b>equal</b> 106:6 110:9 <b>equity</b> 58:13	72:23 73:12 164:2,18,25 168:7 171:3 <b>ESQ</b> 3:7,8,9,15 3:16,17 <b>essentially</b> 49:15 56:16 57:16 128:14 136:24 138:15 <b>et</b> 13:8 37:18 <b>evaluate</b> 24:24 33:16 134:14 134:18,21,23 140:25 141:9 166:14 <b>evaluated</b> 142:20 <b>evaluating</b> 39:10 142:25 <b>Evenchick</b> 56:25 151:17,19,24 <b>event</b> 28:15 90:6 <b>events</b> 154:12 <b>eventually</b> 47:13 48:10 <b>everybody</b> 83:25 <b>evidence</b> 32:8 101:25 127:25 132:14 141:9 <b>evident</b> 34:5 <b>ex</b> 47:18 <b>exact</b> 144:15 158:16 <b>exactly</b> 16:13 57:20 62:12 128:17 134:16 142:7 145:8 152:5 159:16 <b>EXAMINATI...</b> 4:4 11:21 147:11 175:13 177:9 <b>examine</b> 52:5	<b>examined</b> 11:19 179:3 <b>example</b> 20:10 43:18,25 44:10 44:11 115:20 132:19 160:12 160:14,15 168:11 174:16 <b>Excerpt</b> 5:3 60:4 <b>excess</b> 124:21 <b>Exchange</b> 1:4 3:3 10:11 11:8,11 11:13 <b>exclude</b> 52:2 171:25 <b>excluded</b> 49:11 <b>excluding</b> 49:18 <b>excuse</b> 127:22 <b>executed</b> 143:18 179:16 <b>execution</b> 24:10 <b>executive</b> 89:16 <b>exercise</b> 112:8 165:17 166:7 166:10 <b>exercised</b> 165:5 <b>exhaustive</b> 121:12 <b>exhibit</b> 4:14,16 4:18,22 5:3,6 5:10,12,15,19 6:3,8,12,17,21 7:3,10,15,19 8:3,7 10:2,5 23:21 29:18 30:9,15,18,24 30:25 31:10 34:10,11 36:6,7 40:3,9 43:24 44:9,20 48:14 49:4 51:13 60:2 60:4,8 63:16,17 63:22 64:17,24	74:11,15 75:22 76:3 79:13,14 79:20 81:5,11 86:22 87:3 90:20,21 91:3 95:19,24 99:7 104:16,23 107:7,8,14,18 110:3,23 111:15 113:3,9 116:13,18 118:16,22 121:5,9,17 124:9 145:13 145:18 147:4 147:13 171:14 171:16 175:16 <b>exhibits</b> 4:12 23:16 30:11,12 131:5,13 <b>expect</b> 98:15 <b>experience</b> 11:24,25 12:8 33:12 158:17 <b>experiencing</b> 137:18 <b>expert</b> 4:14 10:2 23:17 29:24 172:5 174:3,6 175:17 177:11 177:14 <b>Expertise</b> 149:6 <b>experts</b> 46:7 <b>EXPIRES</b> 179:25 <b>explain</b> 162:8 <b>explains</b> 37:13 <b>exposure</b> 45:17 97:8 <b>express</b> 39:6 <b>expressed</b> 32:15 62:10 127:18 142:11 150:4
<b>E</b> <b>E</b> 3:1,1 4:1,11 5:1 6:1 7:1 8:1 11:17 49:2 135:21 180:1,1 <b>earlier</b> 40:4 65:12 66:5,23 67:4,7,22 84:15 92:15 129:2 139:23 152:23 167:14 175:12 176:2 <b>early</b> 35:6 39:24 40:15,21 75:17 137:19 <b>educating</b> 25:14 <b>effect</b> 9:16 134:4 <b>efficiently</b> 138:8 138:22 <b>effort</b> 15:22 <b>efforts</b> 75:19 <b>Egol</b> 34:6 35:13				

<b>expression</b> 162:7	97:22 98:15,19	62:19,23 64:3	77:25 79:24	31:5 32:9 37:6
<b>extensively</b>	101:9 104:8	107:10 156:19	88:8,9 91:10	38:13 40:11
47:18 174:24	111:10,16,20	173:21	97:13,21	47:9 51:6 65:23
<b>extent</b> 48:8	111:23 118:11	<b>federal</b> 52:18	113:13 114:3	66:25 67:23
58:19 128:12	134:13,15	<b>feed</b> 22:5	114:21 119:8	68:25 69:13
129:17 160:7	136:14 161:21	<b>feedback</b> 155:4	134:12 148:7	70:20 71:9,16
160:11 165:5	164:12 166:10	<b>feel</b> 131:18	155:18 156:11	73:15 77:19
166:18	<b>factor</b> 125:8,15	141:13 179:6	157:8,10 158:3	78:8 80:12
<b>extract</b> 60:2	125:20 126:4	<b>FICO</b> 137:7	158:5	91:16 93:2,21
<b>e-mail</b> 4:18,19	<b>factors</b> 166:17	<b>field</b> 79:6	<b>firsthand</b> 22:2	94:6,19 96:19
5:12,15,19,20	168:15,20	<b>figure</b> 20:8,13,22	38:25	97:2 98:22
6:3,4,8,12,13	<b>facts</b> 38:2 39:15	<b>file</b> 65:4	<b>fit</b> 20:9	105:14 106:8
6:21 7:10,11,15	39:19,20 122:7	<b>filed</b> 54:12 95:25	<b>Fitzpatrick</b> 3:9	109:3,22
7:19,20 34:6,10	129:6 166:21	<b>filing</b> 9:5	11:12,12	110:11,16
34:11,12,18,25	<b>fair</b> 44:23,24	<b>final</b> 28:5 148:4	<b>five</b> 16:16 72:3	112:2,11
35:10,12,21	138:13 140:13	<b>Finally</b> 62:5	72:12 92:13	114:13 118:13
40:4,9,19,22	142:25 174:16	<b>finance</b> 11:24	97:14 118:6	119:19 120:7
59:22 74:11,18	174:17	12:9,12,18,21	127:4 152:24	121:24 122:5
74:25 75:22	<b>fairly</b> 27:14 39:2	20:16 79:3	170:13	122:15,22
76:3 79:14,15	140:17	125:10	<b>fixed</b> 17:5 73:3	123:22 124:24
79:23,24 80:8	<b>fall</b> 30:11 156:9	<b>financial</b> 5:3 17:8	<b>flawed</b> 42:2	125:6 126:9
81:5,6,18 83:3	<b>familiar</b> 37:7	53:23 54:16,23	<b>flaws</b> 42:4	132:9 133:13
86:22 88:8	50:13 163:24	60:5 72:10	<b>Fleischhacker</b>	134:11 135:25
90:21,22 101:2	<b>familiarize</b> 81:15	95:12 174:11	115:8	136:22 138:9
104:16 105:4	118:25	<b>Financing</b> 41:21	<b>flip</b> 128:5	138:24 139:17
113:3,4,9,14	<b>fancy</b> 87:23,24	<b>find</b> 67:11 139:4	<b>floor</b> 68:13	140:8,23
113:20 116:13	<b>far</b> 108:22	155:22	<b>Florida</b> 137:23	141:12,25
116:22 118:16	<b>FAST</b> 84:11	<b>finding</b> 33:25	<b>flow</b> 25:3 120:8	142:15 148:19
118:17 119:10	<b>favorable</b> 149:21	<b>fine</b> 108:15	<b>flows</b> 25:6 27:12	149:25 154:24
119:23 120:11	<b>FCIC</b> 17:12 53:2	<b>fingers</b> 18:4	<b>focus</b> 66:15	156:25 157:18
131:8	54:5,14 55:2	<b>finish</b> 27:17	149:17	169:10 172:23
<b>e-mails</b> 40:6	58:15 60:2,9,21	<b>FINRA</b> 53:6	<b>focused</b> 12:4	173:3
101:12,15	61:5,8,16,20	<b>firm</b> 20:15 27:15	<b>followed</b> 176:7	<b>formed</b> 68:22
121:9 144:21	61:23 62:6,10	65:18 66:4,8,24	<b>following</b> 119:14	69:2,3,4,10,15
	64:6 65:2,17	68:5,21 69:20	131:16	71:2 140:5,15
<b>F</b>	71:20,23	142:13,17,18	<b>follows</b> 11:20	140:20 141:16
<b>F</b> 3:5 180:1	<b>FCIC's</b> 65:5	172:20 174:9	<b>follow-up</b> 175:11	<b>former</b> 31:25
<b>Fabrice</b> 1:7 3:12	<b>feature</b> 125:5	<b>first</b> 12:11,14,20	<b>footnote</b> 60:10	41:18 86:14
10:12 35:21	<b>features</b> 125:10	12:23 29:23	61:2 162:16	<b>forming</b> 29:20
172:6	<b>February</b> 1:15	32:25 33:11	<b>force</b> 9:16 25:21	149:24
<b>face</b> 69:25	2:1 7:6 10:18	35:10 42:9	<b>foregoing</b> 179:4	<b>forms</b> 95:4
<b>face-to-face</b> 70:2	40:20 45:18,25	63:10 64:2	<b>foreign</b> 52:19	161:13
<b>fact</b> 96:16,24	46:13 47:6	74:25 76:21	<b>form</b> 9:10 15:11	<b>formulate</b> 158:12

<b>formulating</b> 30:20 31:16 129:9 132:8 137:25 <b>forth</b> 43:17,18,23 109:6 168:20 180:12 <b>forward</b> 47:21 133:2,3 169:6 <b>found</b> 43:22 69:16 <b>foundation</b> 13:22 15:12 17:14 22:19 23:4 28:11 31:6 32:2 38:24 46:18,24 50:20 51:7,24 65:24 67:2,24 73:16 77:4,20 78:7 80:13 82:19 83:6 85:6 87:11 91:15 93:3,8 94:20 95:14 96:20 97:3 98:23 107:2 108:13 110:15 113:24 116:4 118:14 119:20 120:7 122:23 126:10 130:2,13 131:2 131:11 138:10 138:25 139:18 <b>four</b> 5:9 29:12 63:19 97:14 106:2 147:9 <b>frame</b> 176:4,14 <b>franchise</b> 176:25 <b>fraud</b> 60:16 95:11 <b>free</b> 112:8 <b>frequent</b> 79:9 153:9	<b>frequently</b> 153:13,15,17 <b>front</b> 60:8 65:2 82:12 83:3 105:3 130:4 <b>full</b> 97:21 143:6 160:21 <b>Fuller</b> 115:9 <b>fund</b> 37:22 55:3 55:13 56:3,10 57:13 58:8,12 59:14 137:5 140:6 <b>fundamental</b> 134:17 <b>funds</b> 73:18,19 164:24 <b>further</b> 9:9,14 46:8,11 97:8 175:8 177:9 178:3 180:15 <b>future</b> 85:17 <hr/> <b>G</b> <hr/> <b>G</b> 11:17 <b>gained</b> 12:2 143:15 <b>general</b> 33:12,15 46:25 82:21 85:8 92:11 94:7 94:21 104:11 109:23 111:12 118:5 133:6 147:21 152:2 161:24 164:9 164:13 165:14 167:15 173:14 <b>generally</b> 20:15 23:8,11 24:10 25:13,20 26:22 27:10,24 30:14 37:8 43:7,15 48:21 50:6	54:21 63:6 66:12 68:6 69:14 73:3 81:16 111:13 152:16 153:11 155:6 165:24 167:5 <b>General's</b> 52:16 <b>geographic</b> 137:8 <b>Germany</b> 150:15 150:18 <b>getting</b> 20:3 27:16,17 111:17 124:6 <b>get-together</b> 79:7 <b>give</b> 59:11 165:14 <b>given</b> 39:12 49:8 52:22 63:14 127:21 179:5 180:14 <b>Global</b> 78:13,21 78:24 <b>go</b> 37:16 99:7 100:12 112:12 159:9 <b>going</b> 22:6 44:2 47:21 48:9 56:13 57:14 58:5 64:14 70:15 77:22 78:2 81:14 93:20 94:4 102:14 105:25 111:14 121:13 127:6 146:18 153:18 154:2 160:16 170:15 171:13 178:6 <b>Goldman</b> 13:9 14:22 33:24	34:7 39:24 40:15 60:15 100:8,19 131:20 173:7 173:11,14,18 175:19,22,24 177:12 <b>Goldman's</b> 35:17 <b>good</b> 10:8 26:6 155:6 <b>Gorman</b> 88:18 89:2 114:6 130:10,16,23 131:9 132:14 158:3,4,5,11 158:23 <b>Gorman's</b> 130:7 131:6,15 <b>great</b> 160:7,10 <b>greater</b> 48:8 <b>Greenwich</b> 88:4 <b>group</b> 15:8,16,17 19:12,13 20:2 25:23 52:10 53:5 55:4 58:23 74:23 81:23 83:24 84:10,10 88:6,12 103:21 104:4 113:21 117:2,5 119:11 150:23 <b>groups</b> 24:5 <b>GS</b> 4:21 34:13 <b>guarantee</b> 72:10 95:12 <b>guess</b> 13:4,12 38:14 65:7 67:11 80:24 138:12 163:4 164:10 167:12 <b>guessing</b> 21:23 <b>guidelines</b> 152:6 <b>Gulf</b> 51:13	<b>Guran</b> 81:21 82:9 <b>guy</b> 172:20 <hr/> <b>H</b> <hr/> <b>H</b> 4:11 5:1 6:1 7:1 8:1 <b>half</b> 100:16 173:25 <b>halfway</b> 51:12 65:8 107:24 148:10 <b>handle</b> 24:13 <b>handled</b> 162:2 <b>hands-on</b> 19:25 <b>happened</b> 47:16 121:8 <b>happening</b> 134:19 <b>hard</b> 139:11 142:6 167:23 <b>harder</b> 46:10 <b>headed</b> 82:5 148:7 <b>heading</b> 83:17 84:17 92:10 107:23 111:3 111:15 118:3,5 149:14 <b>hear</b> 167:10 <b>heard</b> 65:11 <b>hedge</b> 37:22 55:3 55:13 56:3,10 57:13 58:12 59:14 137:5 164:24 <b>held</b> 10:15 62:15 <b>help</b> 66:19 <b>helpful</b> 39:9 <b>helping</b> 174:15 <b>hereinbefore</b> 180:12 <b>hereto</b> 9:5
---	---	--	---	--

<b>hesitate</b> 46:23	166:17	147:22 148:17	134:14,15	157:19 158:10
<b>high</b> 137:8 163:6	<b>identify</b> 10:24	<b>impression</b> 66:17	137:15 143:13	158:22 173:7
<b>higher</b> 16:15	25:16 31:9	66:20 67:17	151:21 165:23	173:10
49:11 164:3	136:10 138:6	68:8 158:20	165:25	<b>interest</b> 25:16
168:8 171:4	138:21	<b>improper</b> 176:17	<b>initial</b> 23:21	32:18 33:5,25
<b>highest</b> 138:16	<b>ii</b> 91:24 117:11	<b>inappropriate</b>	92:22 93:6,15	59:2 69:21
139:5	<b>IKB</b> 31:18,21,23	69:11 70:4,11	93:17 122:20	96:15 124:17
<b>highlighted</b>	31:25 32:4,8,12	70:18 71:8,15	123:4 129:14	124:20,21
101:9	34:7,21 36:17	<b>include</b> 105:23	<b>innovation</b> 19:16	125:4 126:5
<b>high-grade</b> 45:5	37:2 39:25	106:6 110:8	<b>innovations</b> 20:5	159:23 162:14
49:14 52:3	40:16,18 41:12	137:6 139:4	<b>innumerable</b>	162:15 163:17
<b>Hill</b> 88:3 89:23	41:18 101:17	<b>included</b> 18:13	20:22	168:4 170:23
<b>himself/herself</b>	133:23 144:5	18:22 91:6	<b>input</b> 123:20	171:7,11
179:14	144:24 147:14	101:8 125:9	152:17 165:11	<b>interested</b> 94:8,8
<b>Hingst</b> 57:7,9	147:19,22,24	<b>including</b> 23:24	167:7,13,13,24	152:4,6 180:17
<b>Holdings</b> 84:18	150:8,16,17,19	58:23 92:4	<b>inquiry</b> 5:4 17:8	<b>interests</b> 174:5
<b>honestly</b> 53:12	151:11,16,18	105:9 114:6	25:5 53:23 60:2	174:23
111:22	151:20,21,24	117:3,5,19	60:5,9 71:5	<b>International</b>
<b>hosting</b> 82:23	152:7,19	125:9 137:6	159:21	175:19 177:13
<b>house</b> 126:15	<b>IKB's</b> 33:25	151:13 158:21	<b>INSERTED</b>	<b>interpret</b> 142:7
149:18	144:2 145:19	<b>income</b> 17:5 73:3	8:15	<b>interrupt</b> 120:5,8
<b>housing</b> 65:20	148:18	<b>increased</b> 127:14	<b>institution</b>	<b>interview</b> 17:8
66:9 137:10,18	<b>imagine</b> 28:17	149:17	173:12,15,19	17:10 53:22
148:13,24	61:10 83:9	<b>incur</b> 136:11	<b>institutional</b> 13:7	54:14 60:21
<b>hybrid</b> 18:12	163:6	<b>indenture</b> 27:25	<b>institutions</b>	61:4 62:13
<b>hypothetical</b>	<b>immaterial</b> 61:14	91:6 115:21	174:11	64:25 65:10
38:12,15 163:4	61:19	116:11 124:16	<b>INSTRUCTI...</b>	71:19,23
<b>I</b>	<b>immediately</b>	177:16,21	8:16	<b>interviews</b> 52:22
<b>idea</b> 35:3	69:15	<b>independent</b>	<b>instruments</b>	<b>introduce</b> 74:5
<b>ideas</b> 133:2	<b>impact</b> 166:13	112:9	12:18,21	85:10
<b>identification</b>	<b>impacted</b> 124:4	<b>indirect</b> 170:6,7	<b>insurance</b> 72:10	<b>introduced</b> 75:6
10:4,7 34:14	125:22 135:23	<b>individual</b> 26:4	<b>insurer</b> 95:12	75:9,12,14
36:9 60:6 63:20	<b>implications</b>	26:16 49:22	<b>intend</b> 48:17	80:11
64:19 74:13	149:18	134:24 179:13	169:22	<b>invest</b> 150:8
75:25 79:18	<b>importance</b>	179:14	<b>intended</b> 167:25	161:4 164:2
81:9 86:25	36:16,25	<b>individually</b>	<b>intending</b> 58:9	<b>invested</b> 31:23
90:25 95:22	<b>important</b> 37:21	41:12	170:5	73:12 150:13
104:19 107:12	100:9,20,23	<b>influence</b> 135:8	<b>intention</b> 66:9	<b>investigative</b>
113:7 116:16	120:16 125:21	<b>influenced</b> 135:5	<b>interaction</b>	30:10 106:16
118:20 145:16	126:7,11,12	<b>information</b> 8:14	173:13	156:6,8
147:7	127:19 143:14	8:15 50:7 82:6	<b>interactions</b>	<b>investing</b> 72:23
<b>identified</b> 39:20	143:20,22,23	82:13 100:15	25:24 66:18	126:22 160:14
	144:17 147:19	128:18 133:8	154:23 156:22	162:12 167:15

<b>investment</b> 13:5 13:7,9 31:22 73:21,22,25 75:4 109:20 143:20 149:5 159:23 162:22 162:25 163:7 163:10 167:2 168:5,7	125:16,21,24 126:18 127:15 135:23 142:23 143:14,16,21 143:24 159:13 160:4 161:14 161:15 163:25 164:17,20 165:13 166:23 167:8 168:7 171:3	56:15 57:16 <b>issuer</b> 92:4,25 117:19 124:18 169:3 <b>issuers</b> 93:14 <b>issues</b> 19:18 20:4 20:4,9,17,22 24:19 143:5,9 143:10	36:7 41:6 <hr/> <b>K</b> <hr/> <b>Katonah</b> 76:11 77:13,17 <b>keep</b> 111:16,19 <b>Keith</b> 88:18 89:2 114:6 119:23 119:25 120:3 130:7 158:3,3,5 158:11	144:10 152:13 153:6 160:7 <b>largely</b> 19:9 45:7 100:24 177:21 <b>larger</b> 16:3 45:4 45:14 164:2,19 168:8 171:4 <b>largest</b> 73:13 133:20 134:5 172:18
<b>investments</b> 76:20 92:20,24 118:8 121:20 134:8	<b>investor's</b> 161:22 168:17	<hr/> <b>J</b> <hr/> <b>January</b> 4:17 10:6 23:18 75:2 86:17 87:8 <b>Jean</b> 115:8 <b>Jeff</b> 57:7,9 <b>Jisook</b> 80:2,4 <b>job</b> 158:19 <b>Joe</b> 56:25 151:17 <b>Johnson</b> 88:10 <b>Johnston</b> 88:17 <b>joined</b> 12:5,25 13:2 <b>joining</b> 12:8 <b>joint</b> 82:17 <b>jointly</b> 85:4,7 <b>Jonathan</b> 34:6 35:13 <b>Jorge</b> 116:22 <b>Journal</b> 5:6 54:22 63:17,23 64:5,9 <b>JPMorgan</b> 13:16 13:18,21 15:6 95:11 96:3 <b>judgment</b> 112:9 <b>July</b> 174:25 175:4 <b>June</b> 30:6,6 78:14,15,17 <b>junior</b> 158:15 <b>J.P</b> 6:18 95:20 <b>Jörg</b> 4:22 34:7	<b>Kent</b> 88:10 <b>Kevin</b> 3:20 10:19 <b>Key</b> 111:3 <b>Kim</b> 74:18,22 75:3 79:25 90:11,13 105:4 153:10,17 <b>kind</b> 25:12 44:16 164:18 167:23 172:20 <b>King</b> 72:20 73:6 <b>knew</b> 32:18 33:24 73:8 77:22 166:18 <b>knowledge</b> 22:2 33:13 38:25 143:15 150:8 168:24 171:19 <b>known</b> 34:21 37:22 38:3 129:6 <b>Kraft</b> 88:20 89:18 <hr/> <b>L</b> <hr/> <b>L</b> 9:1 <b>labeled</b> 10:9 <b>language</b> 94:11 94:14,18 124:16,23 <b>large</b> 13:5 15:20 26:9 27:5,14 35:8 133:24	<b>LaSalle</b> 175:18 175:22 177:12 <b>late</b> 12:13,16,24 29:25 75:17 175:4 <b>Laura</b> 33:19 74:19 75:2,17 76:25 79:25 84:24 85:23 86:4 88:21 90:7 105:9 106:12 108:8 114:6 117:3 129:3,10 129:13 155:11 155:12 156:5 156:11,14,18 156:22 158:15 <b>Laura's</b> 155:14 <b>LCDS</b> 75:5 <b>learned</b> 39:14 <b>learning</b> 151:23 <b>leave</b> 156:23 <b>leaving</b> 156:14 <b>led</b> 13:20 <b>left</b> 66:17 100:15 155:21 156:19 173:21 <b>legal</b> 10:19 71:12 <b>legible</b> 146:11 147:14 <b>Lehman</b> 15:2 75:6 <b>lend</b> 13:24
<b>investor</b> 53:11 53:16 69:11 75:6 108:19 126:2 133:20 134:5 137:13 150:11 152:7 159:5,22 160:18,24 161:3,6,12,18 162:11,14,19 162:21 163:2 163:14,20 164:14 165:8 165:11 167:4,6 167:15 169:7 170:2 171:6 177:18,24	<b>involved</b> 15:9 19:15 20:3 24:13 25:9,18 26:16 27:15 89:7,20 129:25 166:16 176:15 176:21 177:2 <b>involvement</b> 32:19 61:13 69:12,21,21 70:5 127:13 128:12 135:2 135:22 136:5 161:13,22 166:9 168:17 <b>in-depth</b> 157:25 <b>in-person</b> 59:20 <b>Ira</b> 1:14 2:4 4:3 4:14,16 10:2,6 10:10 61:4 76:22 180:11 <b>issuance</b> 16:7 45:2,4 47:7 49:6 <b>issue</b> 25:10 84:14 125:23 142:21 165:16 <b>issued</b> 21:14 22:16 25:2 35:6 46:16 47:2,11	<b>issuer</b> 92:4,25 117:19 124:18 169:3 <b>issuers</b> 93:14 <b>issues</b> 19:18 20:4 20:4,9,17,22 24:19 143:5,9 143:10	<b>keep</b> 111:16,19 <b>Keith</b> 88:18 89:2 114:6 119:23 119:25 120:3 130:7 158:3,3,5 158:11 <b>Kent</b> 88:10 <b>Kevin</b> 3:20 10:19 <b>Key</b> 111:3 <b>Kim</b> 74:18,22 75:3 79:25 90:11,13 105:4 153:10,17 <b>kind</b> 25:12 44:16 164:18 167:23 172:20 <b>King</b> 72:20 73:6 <b>knew</b> 32:18 33:24 73:8 77:22 166:18 <b>knowledge</b> 22:2 33:13 38:25 143:15 150:8 168:24 171:19 <b>known</b> 34:21 37:22 38:3 129:6 <b>Kraft</b> 88:20 89:18	<b>largely</b> 19:9 45:7 100:24 177:21 <b>larger</b> 16:3 45:4 45:14 164:2,19 168:8 171:4 <b>largest</b> 73:13 133:20 134:5 172:18 <b>LaSalle</b> 175:18 175:22 177:12 <b>late</b> 12:13,16,24 29:25 75:17 175:4 <b>Laura</b> 33:19 74:19 75:2,17 76:25 79:25 84:24 85:23 86:4 88:21 90:7 105:9 106:12 108:8 114:6 117:3 129:3,10 129:13 155:11 155:12 156:5 156:11,14,18 156:22 158:15 <b>Laura's</b> 155:14 <b>LCDS</b> 75:5 <b>learned</b> 39:14 <b>learning</b> 151:23 <b>leave</b> 156:23 <b>leaving</b> 156:14 <b>led</b> 13:20 <b>left</b> 66:17 100:15 155:21 156:19 173:21 <b>legal</b> 10:19 71:12 <b>legible</b> 146:11 147:14 <b>Lehman</b> 15:2 75:6 <b>lend</b> 13:24
<b>investors</b> 21:25 22:16,22 23:2 25:6,11,14,20 25:25 26:6,23 32:18 33:14,16 62:6 73:19 74:5 74:7 75:12,14 76:19 79:5,10 80:14,18 85:10 85:12,15,20,22 94:7 96:15 109:19 110:12 111:24 125:12				

<b>lending</b> 174:16 174:17	36:2 45:3 49:18 50:9 51:12	<b>longer</b> 21:6 163:7	46:16,19,21 136:11,19	89:8,19 91:24 92:2,3 107:8
<b>Leslie</b> 74:19,22 75:3 79:25	83:20,25 84:3 84:24 99:25	<b>look</b> 16:6,9 37:15 42:3,6 43:10,14	<b>lost</b> 22:5 <b>lot</b> 18:14,15	116:11 117:15 117:16,18
<b>letter</b> 105:12,18 105:19 106:20 110:4	103:22 113:21 128:21 129:18 130:6 151:25	44:4,25 45:3,12 46:12 47:12,21 51:25 82:2,21	28:16,25 85:14 101:8 102:8 109:9 137:20	<b>manager</b> 27:7 34:2,21 37:22 72:2,10,14 76:9
<b>let's</b> 34:9 36:5 42:6 59:25	152:5 175:16 <b>listed</b> 30:8,23,24	99:13 103:11 105:25 107:3 107:21 119:5,8	165:21 173:16 173:17 174:12 <b>low</b> 137:7	81:4 82:22 89:5 92:2,11,15 94:2 100:12 101:4
63:15 70:22 77:25 79:12 90:19 99:7	32:3,10 48:14 49:8 51:12 76:21 77:22	124:5,8 132:21 136:7 141:19 144:23 148:20	<b>lower</b> 15:19 45:15 49:13 <b>lower-rated</b>	101:16,18,20 101:21 115:19 117:17 118:3,7
103:10 119:8 127:4 145:11 146:15 159:9	78:3,6 83:21 84:9 <b>listen</b> 62:2	164:10,11 165:15,17 166:4,14	49:12 <b>low-level</b> 148:12 149:18	121:18 144:22 147:21 149:4,6 150:5 152:25
170:13	<b>listened</b> 55:24 65:9	171:22 <b>looked</b> 33:14	<b>LTV</b> 137:8 <b>Lucas</b> 88:18	153:5 160:2,5 161:2 166:12 167:17
<b>level</b> 154:6 163:10	<b>lists</b> 30:19 <b>litigation</b> 98:16	40:4 48:23 49:6 98:8 101:3 107:19 110:4,6	89:10 <b>lunch</b> 146:15,20 147:17	<b>managers</b> 32:17 79:5 85:10,15 112:8 144:23
<b>levels</b> 124:19,20 <b>leveraged</b>	<b>little</b> 54:24 <b>LLC</b> 6:19 82:7	121:17 128:25 132:25 137:14 144:11 148:2	<b>Lynch</b> 14:14	152:2 154:25 <b>manager's</b> 27:10
109:10,12 <b>liability</b> 91:25 117:15	91:24 95:21 96:4 117:15 <b>LLP</b> 2:5 3:11	<b>looking</b> 26:7 30:15 44:12,15 47:10 55:24	<hr/> <b>M</b> <hr/> <b>Magnetar</b>	85:11 161:10 <b>managing</b> 12:3,5
<b>Libertas</b> 171:21 <b>lies</b> 149:6	<b>loan</b> 42:18 <b>loans</b> 109:10,12	56:11 65:20 80:19,23,24 88:8 95:2 97:13	168:11 169:14 <b>maintain</b> 124:19 152:10,14	12:6 28:7,13 88:22 144:10 <b>March</b> 13:16
<b>light</b> 93:25 <b>limited</b> 91:25	137:14 <b>logos</b> 82:15 <b>London</b> 84:6	110:24 115:16 127:25 137:5 137:21 138:15	<b>maintained</b> 25:10 153:12 <b>major</b> 14:8	145:19 <b>mark</b> 34:9 36:6
117:15 160:8 173:9 <b>limiting</b> 128:12	<b>long</b> 21:25 22:15 22:22 28:19 56:16 57:17	139:3 142:25 174:15 <b>looks</b> 45:20	<b>making</b> 53:17 148:18 149:3,7 159:23 166:16	59:25 63:15 79:12 90:19 107:6 145:11
128:14 <b>Lind</b> 119:24,25 120:11	96:15 127:15 133:20 135:23 159:13,21	174:15 82:23 83:4 91:17 113:25	168:5 <b>managed</b> 35:14 35:15,18 73:12	<b>marked</b> 10:3,6 23:16 34:14 36:8 60:6 63:19
<b>line</b> 27:17 43:6 62:14 66:16	161:22 162:12 162:20,22,25 163:10,15	119:21 <b>Loreley</b> 41:21 <b>loss</b> 138:16	<b>management</b> 7:3 27:25 75:20 77:3,10 80:25	63:22 64:19,24 74:13 75:24 79:17 81:8
67:15 81:19 88:10,15 <b>lines</b> 92:14,21	165:12 168:5 170:8,24 171:3 171:8,11	139:5 <b>losses</b> 46:9,15	82:7 84:11,13 84:18 85:21 88:23,24,25	86:24 90:24 95:21 104:18 107:12 113:6
97:14 106:2 118:6 144:13 <b>liquidity</b> 13:17				
13:19,23 20:12 <b>list</b> 21:20 29:19				

116:15 118:19 145:16,18 147:7,13 175:16 <b>market</b> 15:10,14 16:9,12,18 21:7 25:12,15 33:13 43:15 47:2 48:5 48:20 65:20,21 66:9,10 75:19 79:11 85:4,19 101:5 125:3 138:7,22 139:16 148:24 149:19 153:25 154:2 155:5 170:8 173:8 <b>marketed</b> 25:18 35:6 80:21 85:13 160:20 <b>marketing</b> 25:19 77:2,9 81:3,19 82:17 85:8,11 155:4 <b>markets</b> 79:4 152:7 <b>marks</b> 10:9 64:13,20 102:17 147:8 <b>marriage</b> 180:17 <b>Martens</b> 3:8 11:10,10 <b>Marth</b> 3:20 10:19 <b>Martin</b> 116:22 <b>Maryam</b> 155:14 155:20,21 156:13 <b>material</b> 55:7 63:7 83:10,13 83:14 100:9,20 100:22 101:8 101:10 128:17	143:7 148:21 <b>materials</b> 30:8 35:20 63:12 96:13 <b>matter</b> 10:11 33:16 94:21 104:11 108:10 112:6 164:9,13 167:2 172:6 180:18 <b>matters</b> 175:17 <b>Matthew</b> 3:8 11:10 <b>MBS-3</b> 4:21 34:13 <b>MCC</b> 100:25 101:4,15 <b>meal</b> 87:25 <b>mean</b> 13:14,23 16:6 18:10 20:7 21:7,11 27:4 29:4 33:11 34:22 35:4 37:11,15 40:17 44:7 46:15,21 46:23 48:25 49:12 50:22 52:24 54:21 55:6,6,9 57:10 62:25 67:9 68:6 68:7 70:21 83:7 84:22 91:17 99:12 101:18 103:22,22 104:10 107:3 108:14,15 109:7 125:7 139:3 141:10 142:5,16 148:20,24 149:9 150:2 155:3 158:14 160:10 161:18	161:24 162:9 162:10,18 164:5,23 168:4 169:17 172:10 <b>meaning</b> 112:19 122:13,17 <b>meaningful</b> 51:4 <b>meaningfully</b> 50:18 51:23 <b>means</b> 38:19 163:5 <b>meant</b> 38:21 39:2 114:15 <b>Meatpacking</b> 87:21 <b>meet</b> 99:23,24 99:25 100:4 102:25 131:24 132:3 150:5,15 150:19 154:21 157:8 158:3,5 <b>meeting</b> 55:12 55:18,19,25 56:18 57:24 59:9,13,17,18 59:23 65:13,18 66:3,7,23 67:7 67:21 68:4,11 68:18,21 69:4,7 69:19 70:2,21 71:2,7 89:14 140:4,10 141:24 143:16 151:4 152:19 152:20 155:15 155:18 157:17 158:6 <b>meetings</b> 80:14 80:18 82:24 85:16 151:20 155:24 157:11 <b>member</b> 15:17 <b>memo</b> 100:25	101:4,13,16 <b>memorandum</b> 82:6,14 <b>mention</b> 40:25 41:5 80:24 <b>mentioned</b> 15:25 27:20 35:5 52:23 145:4 <b>mentioning</b> 97:11 <b>Mentioning/In...</b> 149:14 <b>Merit</b> 2:7 180:8 <b>Merrill</b> 14:14,15 <b>met</b> 41:7,9,11,11 41:12 86:9 89:13 139:25 141:5 147:22 150:17 151:11 151:16,17 152:19 156:11 156:15 158:8 172:6 176:14 <b>Metrics</b> 111:4 <b>mezzanine</b> 45:6 49:16 133:24 149:7 <b>mezzanines</b> 165:2 <b>Michael</b> 34:6 35:13,13,19,24 <b>middle</b> 65:17 124:13 <b>migration</b> 144:12 <b>million</b> 28:24 29:3 74:3,3 108:3 <b>mind</b> 131:12 140:20 141:18 141:19 143:3 155:16 156:3 <b>minimum</b> 124:20 163:10	<b>minuses</b> 144:15 149:10 <b>minutes</b> 64:12 70:21 127:5 170:14 <b>misleading</b> 99:11 99:15,22 102:24 111:24 122:4,8,10 <b>misspoke</b> 103:13 <b>Misstates</b> 140:9 <b>models</b> 24:21 149:20 <b>moment</b> 36:4,12 50:25 60:23 62:18 81:15 98:8 118:24 121:18 124:9 168:14 <b>monetary</b> 163:9 <b>money</b> 73:12 171:10 173:16 173:17 <b>monoline</b> 95:11 <b>month</b> 30:5 153:20 <b>months</b> 46:5,5 47:7,23 <b>Moody's</b> 45:24 49:9 <b>Morgan</b> 6:18 14:24 95:20 169:20 <b>morning</b> 10:8 129:2 <b>mortgage</b> 16:24 101:12 174:13 <b>mortgage-bac...</b> 18:17 <b>motivating</b> 69:17 <b>motivation</b> 165:19 166:8 167:9
--	---	---	---	---

<b>move</b> 46:11 163:2,11 <b>MP3</b> 65:4 <b>Muessel</b> 155:14 155:20,21 156:13 <b>multipage</b> 79:20 81:11 116:18	69:9 100:12 165:25 <b>needed</b> 24:17 37:9,12 59:2 101:3,16 128:18 176:24 <b>negative</b> 140:20 140:25 141:10 141:11,23 142:2,12,16 176:11,19 <b>negatives</b> 145:4 150:3 <b>neither</b> 92:22 115:2 173:2 <b>net</b> 171:7,9 <b>neutral</b> 144:14 145:7 <b>Nevada</b> 137:23 <b>never</b> 29:2 65:11 98:17 168:10 169:18 <b>new</b> 1:2,16,16 2:6,6,9 3:14 10:14,17,17 19:16 25:10 52:15 54:22 84:5,14 96:2 150:21 180:3,5 180:9 <b>nine</b> 46:5,5 47:7 47:23 <b>Nodding</b> 54:18 105:10 118:4 155:9 170:4 <b>North</b> 6:17 95:19 96:3 <b>Nos</b> 4:20 5:17,22 6:6,10,15,23 7:8,13,17 8:5,9 34:13 75:23 79:16 81:7 86:23 90:23	104:17 107:11 113:5 116:14 145:15 147:6 <b>notable</b> 159:2 <b>Notary</b> 2:8 9:16 11:18 179:20 180:8 <b>note</b> 121:10 135:24 <b>noteholders</b> 170:24 171:8 <b>notes</b> 22:16,23 31:19 59:12 68:18 164:3 <b>notify</b> 71:6,12 <b>notional</b> 21:21 133:21 <b>November</b> 34:18 35:11 40:5,6,24 41:2 <b>number</b> 10:9 18:3 21:2 25:9 26:9 27:5,14 37:19 64:14,21 76:4,8 91:4 102:14,18 104:20 107:15 119:9 133:2 144:9,11 145:21 146:18 147:9 153:3 158:16 164:24 175:25 <b>numbering</b> 171:21 <b>numbers</b> 27:13 48:15 49:12 87:4 91:7 145:24 <b>numerous</b> 20:7 <b>NY</b> 3:14 <b>N.E</b> 3:5	<b>O</b> <b>O</b> 9:1 <b>Object</b> 122:15 148:19 156:25 169:10 <b>objection</b> 13:22 15:11 17:14 22:19 23:4 28:10 31:5 32:2 32:9 37:6 38:13 38:24 40:11 46:18,24 47:9 50:20 51:6,24 65:23 66:25 67:23 68:25 69:13 70:20 71:9,16 73:15 77:4,19 78:7 80:12 82:19 83:6 85:6 87:11 91:15 93:2,8,21 94:6,19 95:14 96:19 97:2 98:22 105:14 107:2 108:13 109:3,22 110:15 112:2 112:11 113:24 114:13 116:4 118:13 119:19 120:7,21 121:24 122:5 122:22 123:22 124:24 125:6 126:9 130:2,13 131:2 132:9 133:13 134:11 136:22 138:9 138:24 139:17 140:8,23 141:12,25 142:15 149:25 176:22	<b>objections</b> 9:10 67:8 97:9,15 98:5,10 120:22 123:6 <b>objective</b> 135:14 136:9,25 138:2 139:3,6 <b>objectives</b> 135:11 <b>obligations</b> 11:25 136:10 <b>occasionally</b> 161:9 167:20 <b>October</b> 76:13 <b>offer</b> 48:17 <b>offered</b> 93:14 <b>offering</b> 28:4,5,6 91:6,10,13 92:8 93:12 94:18,23 96:13 98:8 116:12 117:8 117:12,24 121:17 122:4 124:9,11 <b>offerings</b> 25:15 <b>office</b> 52:16 <b>officer</b> 89:16 <b>offices</b> 2:5 10:16 154:17,21 155:8 158:8 <b>Oh</b> 41:16 <b>okay</b> 18:19 32:23 42:8 60:12,25 74:10 76:12,14 79:22 80:9 81:13,17 82:4,8 83:19 87:6 90:18 91:12 92:9 93:4 96:5 96:11 97:20 103:8,12,15 105:2,21,24 106:4,11
--	--	--	---	--

107:16 108:4,7	141:17 143:3	<b>P</b>	128:24 129:2	58:8,12 59:14
110:5 113:12	147:18,23	<b>P</b> 3:1,1 9:1	136:7 148:11	61:21 65:14,18
116:21 117:13	148:17 149:24	<b>page</b> 4:4,13 5:2	175:16	66:4,8,24 67:18
117:25 118:9	165:10 169:25	6:2 7:2,21 8:2	<b>paragraphs</b> 42:7	68:5,9,21 69:20
119:2,4,7	170:5	60:10,11,14,19	<b>paraphrasing</b>	71:3,7,13 99:15
124:10,12	<b>opinions</b> 29:20	61:3,12 65:2,7	57:20	99:25 127:18
135:20 148:6	30:20 31:3,16	65:8,8,17 66:14	<b>part</b> 19:17 72:24	128:22 129:7
149:22 158:18	32:14 106:13	67:13,14 76:7	73:4 99:16	130:17 131:20
159:10,12	129:9 132:8	76:18 79:24	101:19 105:25	133:3,4 135:5,8
171:15,17	142:10	82:12 83:3,16	106:8 110:6,11	135:11 137:5
<b>omission</b> 99:14	<b>opportunities</b>	84:16 88:9	120:20 121:2	137:21 138:15
111:25 143:7,8	79:10 85:14	91:10,10,19,23	123:12,19	139:14 140:6
143:13	<b>opportunity</b>	91:24 92:8	170:25	142:13,17,18
<b>omitted</b> 91:5	85:10,25	93:12 97:13,19	<b>participant</b>	162:11 169:7
<b>once</b> 67:16	132:23	97:22 105:3,17	160:13	176:15
100:10 153:20	<b>opposite</b> 134:16	105:19 107:23	<b>participants</b>	<b>Paulson's</b> 32:18
154:18 157:17	<b>original</b> 106:7,9	114:3,8,18	79:11	33:5 36:16 37:2
<b>ones</b> 12:23 18:10	110:9,11 179:8	115:6 117:11	<b>participate</b> 26:20	61:13 66:8 70:4
31:7 168:12	<b>originally</b> 128:21	117:23 118:18	27:6 58:16,21	127:13 128:12
<b>one-page</b> 74:15	<b>originated</b> 46:22	119:8 124:11	70:7 98:19	135:2,14,21
<b>ongoing</b> 26:8	<b>originating</b>	124:13 135:15	159:14	136:4,9 138:2
<b>opening</b> 29:19	161:19,20	135:16,17	<b>participated</b>	143:18 170:22
30:9,25 31:10	<b>originations</b> 13:8	146:4,6,6,7	33:20 127:22	176:3
32:15 99:8	<b>Orrick</b> 115:12,17	148:4,4 149:14	160:4	<b>Pause</b> 177:6
102:22 128:4	115:23 116:2	159:11 162:17	<b>participating</b>	<b>payment</b> 20:11
128:25 135:15	<b>outcome</b> 53:19	<b>pages</b> 4:23 5:5,9	159:25	<b>Pellegrini</b> 55:21
136:8 159:9	180:18	5:11 6:20 36:8	<b>participation</b>	66:7 136:14,16
162:17	<b>outside</b> 24:15	60:5,9 63:19	36:16 37:2	136:20 138:5
<b>operate</b> 177:19	26:4 27:3,9,10	64:18 91:20	144:17	138:20 139:25
<b>operated</b> 177:17	27:14,19,21	95:21	<b>particular</b> 25:16	141:6,23
<b>operative</b> 27:23	128:21 154:7	<b>Pamela</b> 3:16 11:5	26:7 67:16	<b>Pellegrini's</b>
<b>opine</b> 136:8	<b>overall</b> 72:24	<b>paper</b> 179:8	131:19 161:11	137:4 138:3
<b>opined</b> 41:24	166:24 167:9	<b>paragraph</b> 32:20	167:18 173:20	139:14,21
99:9 159:4	<b>overcollaterali...</b>	33:23 36:21	<b>particularly</b>	<b>people</b> 13:24
<b>opining</b> 143:11	124:18,20	38:10,23 39:22	19:15 47:2	24:5,9,20 25:9
<b>opinion</b> 32:23	125:5 126:6	42:22 43:17,23	159:2	25:23 26:5
33:9 48:17 69:3	<b>overwhelming</b>	44:9,19 60:20	<b>parties</b> 9:4 24:16	27:14 41:11
99:16 100:3	46:9,14,15,21	61:3,11 62:5	27:3,6 175:21	48:3 55:20 56:9
102:22 108:21	<b>Overy</b> 2:5 3:11	96:9 102:22	180:16	56:20 57:12
112:6,13,18	10:16 11:2,4,6	103:5,10	<b>pattern</b> 121:6	58:23 83:20,23
127:12,20	65:4	105:22 106:2,3	<b>Paulson</b> 55:3,13	84:2,3,5,8,9,21
132:12 135:13	<b>O'Neil</b> 3:17 11:3	107:24 110:7	55:22 56:3,10	88:16 89:12
136:15 137:25	11:3	110:19 128:3	56:23 57:13,24	90:9 104:12

105:7 114:3,23 114:25 115:3,5 115:6,8,9 117:2 117:5 119:11 133:23 141:20 151:13,15 153:13,21 154:3 157:14 164:18 <b>percent</b> 37:23 50:16 51:2,20 106:7 110:9 157:15 <b>percentage</b> 153:4,7 <b>perception</b> 155:5 <b>perform</b> 49:3 67:19 92:3 117:17 <b>performance</b> 23:5,8,15 46:11 48:6,8 63:5 125:22 171:10 171:11 <b>performed</b> 21:25 22:3 42:2 43:6 44:12,16 47:3 <b>performs</b> 48:23 <b>perfunctory</b> 37:5 <b>period</b> 14:5 21:9 21:15 42:25 48:7 54:24 129:25 163:25 <b>periodically</b> 46:4 <b>person</b> 17:4,5 55:22 56:3 72:22 80:5 81:22 88:11 99:3 116:24 155:13 157:6 158:6 <b>personal</b> 154:6 174:5,22	<b>personally</b> 17:22 19:14 75:18 <b>perspective</b> 38:9 83:8 134:18 161:3 <b>phenomena</b> 19:10 <b>phenomenon</b> 163:25 <b>Philosophy</b> 149:5 <b>photography</b> 174:24 175:6 <b>pick</b> 45:8 47:22 47:22 61:21 96:16 <b>picture</b> 87:13,15 172:11,11 <b>piece</b> 43:20 100:15 133:8 <b>place</b> 19:9 24:17 24:17 65:20 66:9 68:12,22 85:15 94:14 99:13 112:15 112:15 128:9 128:11 133:10 134:16 144:13 165:4 <b>places</b> 137:21 <b>placing</b> 94:11 <b>Plaintiff</b> 1:5 3:4 <b>plaintiff's</b> 46:6 <b>Platform</b> 81:19 <b>play</b> 21:8 159:5 177:24 <b>played</b> 37:24 <b>please</b> 10:23 11:15 22:12 76:18 80:8 118:25 119:15 167:10 170:14 <b>pluses</b> 144:15 149:10	<b>point</b> 21:20 26:7 36:18 37:16,16 43:7 47:20,22 47:22 49:2 78:19 100:10 108:17 120:13 120:15 125:25 140:10 154:12 <b>points</b> 95:5 <b>pool</b> 101:20 <b>pools</b> 42:18 <b>poor</b> 171:10 <b>poorly</b> 47:3 67:19 <b>portfolios</b> 19:4,5 43:10 48:10,23 49:16,19,23 50:6 98:4 104:12 <b>portion</b> 159:24 <b>portions</b> 139:9 <b>position</b> 56:16,17 57:17,17 123:9 133:15,24 134:2 155:13 155:14 162:20 169:23 171:3 <b>positions</b> 98:3 123:14 124:3,6 163:20 164:3 164:19 165:7 168:8 171:4 <b>positive</b> 157:5 <b>positives</b> 145:4 150:3 <b>possible</b> 66:20 66:21 104:13 <b>post</b> 47:18 <b>posted</b> 20:21 <b>Posto</b> 87:8,12,14 87:19 90:17 <b>potential</b> 32:17 79:11 80:11	85:17 149:3 <b>PowerPoint</b> 83:8 <b>practice</b> 17:13 <b>preference</b> 124:22 <b>preliminary</b> 28:5 82:5,13 117:8 <b>prepared</b> 65:4 83:4,7 113:22 116:2 <b>preparing</b> 106:13 <b>presence</b> 179:17 <b>present</b> 3:19 152:20 <b>presentation</b> 82:22 83:5 84:17 <b>presentations</b> 79:8 <b>presented</b> 135:18,19 141:20 176:3 <b>president</b> 89:16 <b>press</b> 54:17,23 172:13,16,24 <b>presumably</b> 170:9 <b>presume</b> 61:9,17 <b>pretty</b> 163:6 173:24 <b>previous</b> 66:18 <b>price</b> 137:10,18 149:18 <b>priced</b> 138:8,22 160:20 <b>prices</b> 108:5 <b>Pricing</b> 174:16 <b>principal</b> 22:18 23:3 25:11 27:22,23,23 48:25 116:10 176:23 <b>prior</b> 12:8 94:25	141:24 148:23 155:13 <b>private</b> 53:3 72:23 73:11 <b>probability</b> 138:16 139:5 <b>probably</b> 15:23 17:19 19:3 72:3 153:10,12 155:11,17,22 156:3,15 158:6 172:18 173:24 176:24 <b>proceed</b> 11:16 <b>proceedings</b> 177:6 178:8 <b>proceeds</b> 124:21 124:22 <b>process</b> 37:25 38:5 109:24 127:14,23 128:6 130:12 132:13,22 134:9 135:23 <b>processing</b> 83:8 <b>product</b> 25:13 26:24 84:13 <b>Production</b> 4:20 5:13,16,21 6:5 6:9,14,22 7:7 7:12,16,22 8:5 8:9,18 34:13 74:12 75:23 79:16 81:7 86:23 90:23 104:17 107:11 113:5 116:14 118:19 145:15 147:6 <b>professional</b> 26:22 157:6,24 <b>professionals</b> 23:25 24:7
---	--	--	---	---

25:24 <b>profited</b> 98:3 <b>program</b> 35:14 35:16,18 126:15 <b>project</b> 34:20 <b>projects</b> 174:10 <b>prominently</b> 155:16 <b>promoted</b> 12:6 <b>prop</b> 169:21 <b>proper</b> 142:23 176:9 <b>proposal</b> 7:4 75:4 107:9,23 111:15 <b>proposed</b> 69:21 70:8,11,19 71:13 140:21 <b>proposing</b> 68:24 69:23 71:7 142:14 <b>propriety</b> 140:5 140:15 141:17 176:10 <b>prospective</b> 159:21 <b>prospectus</b> 27:13 <b>protection</b> 20:11 37:23 122:20 125:11,12 138:14 161:21 162:4 <b>prove</b> 28:18 <b>proven</b> 149:2 <b>provide</b> 76:19 124:17 <b>provided</b> 52:9 53:23 72:10 95:12 104:8 108:25 109:21 111:21 121:7 128:21 132:14	<b>providing</b> 106:6 110:8 <b>prudence</b> 145:2 145:7 148:14 149:21 <b>Public</b> 2:8 9:16 11:19 179:20 180:8 <b>publications</b> 54:19 <b>publicly</b> 50:6 <b>published</b> 46:3 <b>purchase</b> 59:4 101:17 119:14 138:14 <b>purchaser</b> 92:22 93:6,16,17 <b>purchasers</b> 31:19 135:24 <b>purchasing</b> 164:14,25 166:5 <b>pure</b> 162:7 163:5 163:6 164:7 <b>purely</b> 111:7 159:5 162:14 162:19,21 163:2,8,11,13 164:13 165:8 170:2,23 177:24 <b>purpose</b> 54:9 74:8 84:12 120:16 121:13 163:22 166:24 <b>purposes</b> 31:16 47:19 163:22 <b>pursue</b> 70:16 <b>push</b> 131:22 <b>pushed</b> 130:19 <b>put</b> 15:18 20:2,24 21:16 48:22 83:9,12 88:6	94:23 98:24 99:4 101:17 118:23 132:25 133:3,17 134:25 136:2,3 136:4 140:6,19 140:21 142:14 168:6 169:8,15 169:22 172:21 <b>putting</b> 24:14 135:9,11 <b>p.m</b> 127:10 146:19,20 147:3,10 170:16,19 178:7,8 <hr/> <b>Q</b> <b>qualifies</b> 40:21 <b>quality</b> 49:16 <b>question</b> 9:11 19:20 22:12,20 22:22,25 29:14 36:22,23 38:12 38:15 40:8 51:3 64:2 97:16 131:18 132:3 135:21,25 136:6,24 139:10 143:4 153:25 157:7 167:10,11 <b>questionable</b> 69:16 <b>questioned</b> 38:18 54:4 <b>questioning</b> 133:7 137:3 172:19 <b>questionnaire</b> 76:9,18 <b>questions</b> 44:3,6 90:15 100:6	102:4 103:6 119:16 120:5 131:17 135:18 135:19 142:21 158:2 165:22 175:8,11 176:2 176:5,8,12 177:4,8 178:3 <b>quick</b> 22:5 102:10 <b>quickly</b> 48:12 <b>quite</b> 20:7 78:25 146:13,14 160:8 <b>quote</b> 52:25 85:7 138:12 <b>quoted</b> 51:17 58:18 61:17 62:2,13 142:4 <b>quoting</b> 34:17 <hr/> <b>R</b> <b>R</b> 3:1 11:17,17 180:1 <b>ramped-up</b> 160:19 <b>ran</b> 19:12,13 24:20 88:24 <b>range</b> 45:8 153:23 166:13 <b>rank</b> 16:8 <b>rankings</b> 16:7 <b>rate</b> 52:5 <b>rated</b> 42:25 50:2 52:6 <b>rating</b> 24:14,24 25:4 44:25 45:9 49:7,8,13 50:15 51:18 <b>ratings</b> 45:23 144:11 <b>rationale</b> 167:18 <b>ratios</b> 137:8	<b>RBS</b> 14:20,21 <b>reach</b> 112:4 139:12 <b>reaction</b> 63:2 <b>read</b> 17:23 22:12 22:13 31:13 33:2 35:24 36:3 37:13 54:16,20 54:21 60:22 64:9 94:24 96:8 106:15 129:10 131:12,17 132:10 140:17 141:18 142:4 142:24 146:8 146:13 156:8,9 167:11 172:13 179:3 <b>reading</b> 35:20 60:24 96:10 104:10 108:8 139:8 141:15 144:20 172:24 <b>reads</b> 135:21 <b>realistic</b> 138:6 138:21 <b>really</b> 19:10 20:22 21:8 28:14,15 47:18 48:18 55:16 67:10 68:7,14 104:13 128:16 134:4,18 142:17 146:7 146:12 154:14 155:20 156:2 158:7,25 160:8 161:4,6,8 173:5 173:16 174:11 <b>Realtime</b> 2:7 180:7 <b>reason</b> 25:22 26:2,12 69:17
--	--	---	--	---

98:12 99:16 103:24 104:6 128:8 141:4,7 157:21 <b>reasonable</b> 44:13,24 47:11 47:23 48:2 <b>reasons</b> 59:7 70:15,23 99:20 <b>rebuttal</b> 4:16 10:5 23:18 30:16,21 31:2 36:14,18,20,23 42:6,22 43:17 43:24 44:20 62:22 103:10 103:16,25 110:19 127:17 171:13 <b>received</b> 29:2 63:12 <b>recess</b> 22:8 64:16 102:16 127:8 146:20 170:17 <b>recognize</b> 88:16 88:21 89:2 91:13 116:24 <b>recollect</b> 77:18 87:14 <b>recollection</b> 12:12 16:17 28:22 61:7 66:6 66:22 67:6,20 68:3 76:24 77:5 80:10 87:7 94:11 104:14 <b>recommendation</b> 8:3,7 31:22 32:11 144:2,20 144:25 145:14 145:19 147:5 147:15,25	148:3 149:15 <b>reconcile</b> 132:12 132:16 134:7 134:13 <b>record</b> 8:3,7 10:24 22:6,10 22:13 32:11 39:18 64:14,22 102:14,19 127:7,10 144:2 144:20,21,25 145:13,19 146:18 147:4 147:10,14,25 148:2 170:16 170:19 178:6 179:5 180:14 <b>recording</b> 65:10 <b>reduce</b> 97:8 <b>refer</b> 34:23 65:16 97:19 116:8 136:18 143:25 163:13 <b>reference</b> 37:23 38:2,5 42:11,24 46:2 49:22 50:11,13,17 51:2,15,20 58:3 60:15 62:7 64:7 75:18 77:2,6,8 77:16 78:3,10 97:10 98:20 99:11,22 100:4 100:11 101:7 102:24 118:12 120:20 121:2 121:22 123:15 129:14 130:18 136:10 148:11 <b>referenced</b> 19:7 20:3 36:15,24 42:19 60:10 64:4	<b>references</b> 76:19 <b>referred</b> 27:2 36:4 38:22 53:22 131:9 <b>referring</b> 23:20 29:18 36:12,19 39:22 83:16 116:9 136:19 145:22 162:19 <b>refers</b> 35:7 61:4 110:24 <b>reflected</b> 121:9 <b>reflection</b> 61:15 <b>reflects</b> 61:20 62:5 65:3 67:15 <b>refresh</b> 61:7 66:6 66:22 67:20 76:24 80:10 87:7 <b>Regal</b> 88:19 <b>regard</b> 51:4 111:24 164:7 <b>regarding</b> 35:14 149:21 159:22 <b>regardless</b> 70:4 <b>regards</b> 148:22 <b>regions</b> 137:24 <b>Registered</b> 2:7 180:8 <b>regular</b> 26:23 <b>regulator</b> 52:10 52:19,25 71:6 <b>regulators</b> 52:23 174:18 <b>relate</b> 80:17 <b>related</b> 174:11 180:15 <b>relates</b> 22:22 35:2,3 40:9 <b>relating</b> 40:23 <b>relationships</b> 25:11 <b>relative</b> 16:9	148:8 <b>Relevance</b> 28:10 98:11 <b>relevant</b> 37:21 42:23 43:8,9,13 43:14,21 45:8 45:10 48:20,21 49:10,15 63:6 122:7 142:19 148:13 149:3 159:3 <b>relied</b> 31:7 <b>relying</b> 39:17 138:12 <b>remain</b> 148:14 <b>remember</b> 15:23 19:5 28:14,20 29:5 30:5 54:4 55:10,16,23 57:20 58:10 67:10 68:11 69:24 70:6 75:16,21 78:9 78:19 81:2 87:25 89:13,14 90:3,7,7,8,12 102:7 107:5 108:16 109:5 112:24 120:3 137:22 144:24 145:9 150:10 150:12,22,24 151:5 152:4 154:13 155:10 155:15,18 156:11 157:13 158:16 171:20 171:21 172:18 177:18,22 <b>repeat</b> 36:22 <b>report</b> 4:14,16 5:4 10:2,5 23:17,18,21	29:19 30:9,16 30:21,25 31:2 31:10 32:15 33:24 34:17 36:14,19,20,23 42:3,6,22 43:17 43:24 44:20 45:14 46:3 60:3 60:5,9 62:19,22 62:24 63:2 64:3 82:9 90:13 99:8 102:23 103:10 103:16,25 110:19 114:25 127:17 128:4 128:25 135:15 136:8 151:19 158:22 159:8,9 162:8,17 171:13,25 172:3 175:15 175:22 <b>reported</b> 1:24 74:24 83:23 84:4,11,12,13 88:13 105:4 113:14 119:25 151:13,15 <b>reporter</b> 2:8 10:21 11:15 180:8 <b>Reporting</b> 10:21 <b>reports</b> 43:5 141:5 142:11 144:2 <b>representative</b> 139:16 152:20 <b>representatives</b> 55:12 57:24 59:14 66:24 68:4 71:3 150:19,22 <b>represented</b>
--	--	--	--	---

71:20 96:14 115:15 <b>representing</b> 10:20,22 11:2,4 11:6,8 179:13 <b>reputational</b> 59:6 <b>request</b> 121:11 169:8,15,21 <b>REQUESTS</b> 8:14,18 <b>required</b> 20:19 25:5 124:19 166:3,25 167:3 169:5 <b>reread</b> 97:16 <b>rescued</b> 13:18,20 <b>research</b> 43:20 <b>reserved</b> 9:11 <b>resided</b> 134:6 <b>residential</b> 18:17 <b>respect</b> 37:20 123:15 143:24 163:16 <b>respective</b> 9:4 <b>respond</b> 25:5 <b>responded</b> 106:25 138:17 <b>responding</b> 71:4 <b>responsibility</b> 126:22 169:2,3 <b>responsible</b> 24:10 27:16 88:22 <b>rest</b> 50:22,23 51:9 <b>restaurant</b> 87:16 87:23 88:3 <b>result</b> 107:25 <b>results</b> 44:11 149:20 <b>reverse</b> 159:21 <b>review</b> 24:18 30:8 39:18 80:7	101:25 115:23 129:23 <b>reviewed</b> 30:10 41:20 106:12 116:2 131:5,15 139:21 140:14 156:5 <b>reviewing</b> 107:17 119:3 132:7 <b>reviews</b> 174:16 174:17 <b>ridiculous</b> 61:12 <b>right</b> 12:3 24:17 29:21 31:12,20 33:6 35:25 38:12 43:2 89:6 91:21,22 95:8 102:2 131:6 137:22 159:15 159:19 162:17 162:19 170:8 <b>rights</b> 165:17,18 166:6,7,10 <b>risk</b> 125:8,15,20 127:15 134:2,5 135:23 148:13 160:15 <b>RMBS</b> 18:25 19:8,23 20:25 21:8,15 22:17 22:24 23:13 42:10,18,23,25 43:6,11 46:17 46:19,22 47:2 48:20 50:2,4,17 51:3 52:6 58:8 63:5 96:25 97:8 98:2 99:18 129:24 136:21 137:6,14 138:7 138:14,15,21 139:4,4 <b>RMR</b> 1:25	180:22 <b>road</b> 47:13 <b>ROGERS</b> 3:16 <b>role</b> 19:6,21 26:25 27:19 37:24 38:22 42:13 44:18 70:5 89:10 100:14,22 105:23 106:5 110:8 113:17 114:11 115:13 126:6 143:18 147:18 156:14 157:12 159:6 163:17 164:20 170:3,6,6,7,22 172:22 177:25 <b>roles</b> 24:5 37:14 89:13 <b>room</b> 26:10 <b>Roseman</b> 33:19 84:23 86:8,11 88:19 89:15 129:22 132:15 157:8,9 158:23 <b>Roseman's</b> 129:4,19 <b>Rosenberg</b> 56:5 <b>Roth</b> 114:9 115:25 <b>rule</b> 161:25 168:23 <b>RULING</b> 8:17 <b>run</b> 28:19 <b>running</b> 116:19 <hr/> <b>S</b> <hr/> <b>S</b> 3:1 4:11 5:1 6:1 7:1 8:1 9:1,1 <b>Sachs</b> 13:10 14:22 60:16 131:20 173:7	173:11,15,18 175:19,23 177:12 <b>salary</b> 28:9,12 28:12 29:15,16 <b>sales</b> 13:7 25:21 <b>salesperson</b> 56:23 57:9,10 169:18 <b>SARA</b> 132:19 <b>Sarah</b> 88:17 119:10 <b>sat</b> 73:6 <b>saw</b> 32:3,5 92:15 130:20 <b>saying</b> 61:23 67:16 68:7,8 126:21 133:8 135:4 161:7 <b>says</b> 37:17 39:24 61:12 65:18 66:16 67:9 76:18 92:14,22 93:13 106:5 107:24 118:6 124:13,16 149:17 162:19 <b>scheduled</b> 79:8 175:3 <b>Schulte</b> 114:9 115:25 <b>Schwartz</b> 33:19 74:19 75:3,17 76:25 79:25 84:25 85:23 86:4 88:21 105:9 106:12 106:17,23 107:18 108:9 114:6 117:3 129:4,10,13 132:14 155:12 155:12 156:5	156:12,18,23 158:23 <b>score</b> 50:3,15 51:18 149:21 <b>scores</b> 45:2,9 49:7,8,13 137:7 <b>Scott</b> 5:10 16:20 57:4 64:17,25 115:2 <b>sealing</b> 9:5 <b>SEC</b> 5:13,17,22 6:6,10,15,23 7:8,13,17,22 8:5,9 52:13 54:12 60:15 63:13 74:12,16 75:23 76:4 79:16,21 81:7 81:12 86:23 87:4 90:23 91:4 91:8,11,20 104:17,24 107:11,15 113:5,10 116:14,19 118:19 119:9 137:4 145:15 145:20,24 147:6,15 168:23 <b>second</b> 22:5 55:22 56:2 83:21 105:19 177:5 <b>secret</b> 65:19 <b>section</b> 49:2 65:16,22 92:10 118:2 148:7 149:13 <b>sections</b> 80:25 146:3 <b>sectors</b> 21:13,14 <b>securities</b> 1:4 3:3
---	--	--	---	--

11:11,13 13:8	161:8 165:4	135:22 159:6	<b>shape</b> 165:18	136:20
18:11,18 45:7	167:16 171:22	159:14,25	<b>share</b> 16:10,11	<b>Shu's</b> 136:16
45:18,21 46:10	172:8	160:5,6 161:23	16:18	<b>side</b> 68:18 82:15
48:5,7,12,13	<b>seed</b> 104:8 108:2	164:21 165:12	<b>shareholder</b>	82:15 162:3
49:22 50:2	108:24 109:13	167:8 168:17	73:14,18	163:5
51:21 79:3 92:5	109:21 111:17	170:3,22	<b>shareholders</b>	<b>Siegel</b> 115:7
92:19,24 93:14	111:21	177:25	124:22	<b>Signature</b> 179:11
95:20 96:3	<b>seeing</b> 64:7 75:4	<b>selling</b> 162:4	<b>shares</b> 15:10,14	<b>signed</b> 9:15,17
117:20 118:8	<b>seen</b> 31:24 32:7	<b>SEN</b> 3:21	<b>sheet</b> 96:25	<b>significance</b>
121:20 134:22	38:17 40:22	<b>senior</b> 12:2,2,6	179:7	45:25 47:5
134:23 162:13	41:4 65:11	17:4,5 28:7,13	<b>short</b> 37:5 56:13	<b>significant</b> 37:24
166:12	76:15 86:6 96:6	72:22 84:18,21	56:16 57:14,17	38:22 73:22
<b>securitization</b>	108:23 137:13	88:21	62:6 65:20 66:9	112:14 159:23
174:12	165:2 174:4	<b>sense</b> 26:19	69:11 98:3	164:15
<b>securitizations</b>	<b>select</b> 58:6,9	170:7 173:4	122:20,24	<b>significantly</b>
12:10	62:7 66:19,21	<b>sent</b> 117:2	123:4,12,19	43:14
<b>security</b> 35:8	92:18,23 94:2	<b>sentence</b> 34:3,18	124:2 159:5	<b>Sihan</b> 56:7
119:14,18	99:17 112:19	34:22,23 97:21	161:14,15,17	<b>similar</b> 33:22
132:17	118:7 121:19	159:17	161:18,21	43:12 44:25
<b>security-by-se...</b>	122:12 128:15	<b>separate</b> 25:22	162:4,7,11,14	45:2 63:3
132:20	<b>selected</b> 58:4	72:25 73:2	162:21 163:2,8	115:21,22
<b>SEC's</b> 31:10	94:9 96:24	179:7	163:11,13,15	129:23
<b>see</b> 34:3 39:19	97:24 99:10	<b>series</b> 82:24	163:20 164:2	<b>similarly</b> 89:20
39:23 40:4	100:16 102:23	85:16 118:22	164:14,19	<b>single</b> 37:22
60:14,20 61:2	106:25 108:11	<b>serious</b> 62:7	165:8 168:8	109:15
65:22,25 75:2,5	108:20 109:20	157:6	169:7,9,23	<b>singled</b> 172:22
76:8,21 81:18	109:24 128:13	<b>serve</b> 33:4 75:18	170:2,9,9,10	173:4
82:12 83:20	129:14 130:11	76:25 77:15	170:23 171:4,7	<b>sitting</b> 17:25
84:17 91:23	133:7,12,16	78:10 129:5	171:9 177:24	73:10
92:13,21 96:12	<b>selecting</b> 37:25	<b>services</b> 92:4	<b>shortcoming</b>	<b>situation</b> 165:2
96:18,21,23	38:5 61:14	117:18	125:18	<b>six</b> 72:3,12 84:6
97:4,6,10 105:3	67:18 93:20	<b>serving</b> 77:6,8	<b>shorted</b> 97:7	92:13 118:6
107:4,23	94:4 96:14	<b>SESSION</b> 147:2	<b>shorting</b> 164:25	152:24
108:15 110:23	100:14 127:19	<b>set</b> 43:17,18,23	166:6	<b>size</b> 16:9 73:24
111:5,15,18	166:9	85:16 168:20	<b>shorts</b> 56:14	<b>sizes</b> 24:25
117:14,22	<b>selection</b> 33:4	169:6 180:12	57:15 162:3	<b>slide</b> 128:5
118:5 119:10	69:12 92:4	<b>setting</b> 154:10	164:8 170:11	<b>small</b> 26:22
120:11 121:5	98:20 100:13	<b>settlement</b> 115:9	<b>show</b> 43:4 48:15	146:8,12,13
121:14,22	112:9 117:19	<b>seven</b> 84:7	74:9	<b>smaller</b> 15:10,14
124:5,23 128:4	123:21 126:7	<b>Shafer</b> 74:19,22	<b>showed</b> 39:25	<b>SocGen</b> 16:5,6
145:8,9 146:10	127:14,23	75:3 79:25	40:16 109:5	<b>social</b> 154:10
148:10 154:3	128:6 129:6	90:11,13 105:4	<b>shown</b> 121:11	<b>socially</b> 154:3
160:19,22	132:13 134:9	153:10	<b>Shu</b> 56:7 136:14	<b>sold</b> 161:20

<b>somewhat</b> 37:5	89:9 94:16	<b>statement</b> 33:23	20:16 79:3	<b>supervised</b> 19:25
<b>Soren</b> 51:4	106:18,22	108:21 130:20	107:25 125:10	23:24
<b>Sorin</b> 50:9	107:5 108:16	133:10	125:13	<b>supervising</b> 99:3
<b>sorry</b> 19:20 46:6	123:9 126:24	<b>statements</b>	<b>structurers</b>	<b>supervision</b>
56:8 59:8 87:17	136:23 143:18	31:14 38:19	23:25 24:6,20	104:5 114:24
97:11 115:5	169:6 171:23	<b>states</b> 1:1 10:13	24:21 26:13	<b>super-senior</b>
122:24 146:5	<b>specificity</b> 151:3	137:9,17	<b>structures</b> 171:5	122:21 123:4
150:25	<b>specifics</b> 13:25	<b>static</b> 19:4,5	<b>structuring</b> 13:8	134:3
<b>sort</b> 43:25 44:10	23:14 55:10	49:18 101:20	19:18	<b>supported</b> 38:6
53:13 89:20	107:20 109:6	<b>stepped</b> 156:14	<b>study</b> 44:16	<b>supports</b> 148:13
151:25 153:11	<b>specified</b> 124:19	<b>steps</b> 128:9	<b>studying</b> 174:19	<b>Supreme</b> 95:25
157:22 162:5	<b>speed</b> 106:9	<b>sticks</b> 155:16	174:20,21,24	<b>sure</b> 17:15,23
165:11 166:19	<b>spending</b> 154:9	<b>STIPULATED</b>	174:25	28:15 29:5 30:7
172:19,21	154:14	9:3,9,14	<b>subject</b> 81:19	52:24 56:20,21
174:7	<b>spoke</b> 61:8 86:3	<b>stocked</b> 98:2	106:8 108:25	56:24 57:11
<b>sorts</b> 165:7	86:10	<b>story</b> 100:17	110:10 120:14	58:14 68:8
<b>sourcing</b> 94:8	<b>spoken</b> 41:14,17	133:16	<b>submission</b>	77:15 78:18
<b>Southern</b> 1:2	86:6,13 153:13	<b>straightforward</b>	77:17	87:16 90:4
10:13	<b>spring</b> 29:25	39:3	<b>submit</b> 175:21	114:15 116:5
<b>space</b> 14:9 15:9	30:14 139:24	<b>strategies</b>	<b>submitted</b>	123:18 148:6
15:23	156:10	166:24	175:17 177:11	152:21 156:21
<b>speak</b> 140:18	ss 180:4	<b>Strategos</b> 97:25	<b>subprime</b> 42:25	157:16 158:7
161:2	<b>staff</b> 54:5 55:2	<b>strategy</b> 66:12	46:17 47:2 50:2	172:4
<b>speaking</b> 77:12	<b>stamp</b> 74:16	164:25	50:17 51:3 52:6	<b>swap</b> 28:3
<b>specialize</b> 26:10	104:24	<b>Stream</b> 51:13	65:21 66:10	<b>swear</b> 11:15
<b>specific</b> 19:19	<b>stamped</b> 147:15	<b>Street</b> 3:5 5:6	<b>subsequent</b>	<b>switch</b> 102:9
21:2 23:5 25:19	<b>stand</b> 131:12	54:21 63:17,23	156:13	<b>sworn</b> 9:17 11:18
26:21 33:18	156:2	64:5,9 87:22	<b>substance</b> 83:12	180:13
54:3 59:11 74:8	<b>standard</b> 130:11	<b>stressed</b> 131:18	<b>substantial</b> 79:6	<b>syndicate</b> 84:8,9
75:13 80:20	163:6	<b>string</b> 4:18 5:19	<b>success</b> 34:20	<b>synthetic</b> 17:12
85:13 86:20	<b>standards</b>	6:3,12 7:10,19	<b>successful</b>	17:19 18:2,10
89:13 93:22	131:24 132:4	34:11 74:25	101:23	18:16,24 19:22
94:10,25 99:13	<b>standing</b> 120:7	79:14 81:5	<b>sued</b> 95:11	20:6 21:5,8,12
104:13 153:22	<b>Stanley</b> 14:24	90:21 113:3	<b>suffer</b> 136:19	21:16 35:14,15
153:24 154:12	<b>Stanley's</b> 169:20	118:16	<b>suffered</b> 22:17	35:18 129:24
159:24 160:24	<b>start</b> 10:9 64:20	<b>strong</b> 149:19	23:2	161:16
163:16,21	102:17 147:8	<b>structural</b> 25:6	<b>sufficient</b> 100:2	<b>synthetics</b> 18:11
164:11 177:15	<b>starting</b> 95:4	<b>structure</b> 20:9	100:11 101:8	18:13 19:8 28:2
<b>specifically</b> 29:6	<b>state</b> 2:8 32:23	24:25 35:8	<b>suggest</b> 166:11	<b>system</b> 152:12
35:5,17 40:25	52:15,19 95:25	61:21 133:23	<b>suggested</b> 63:7	152:15
41:4,8 42:7	143:12 180:3,9	164:4,16 168:9	<b>suggestion</b>	<b>systems</b> 132:18
50:5 55:17	<b>stated</b> 33:19 63:4	<b>structured</b> 11:24	131:19	<b>S&amp;P</b> 45:24
56:22 68:9 70:6	93:9	12:9,11,18,21	<b>Suisse</b> 14:16,17	

Ira Wagner

February 5, 2013

New York, NY

Page 202

<b>T</b>	95:7 99:4 100:8	129:4 132:7,10	24:5 36:8 47:12	<b>Tomljanovic</b>
<b>T</b> 4:11 5:1 6:1 7:1	100:19 114:19	133:11 136:16	60:5 102:18	88:19 90:8
8:1 9:1,1 180:1	153:8	136:19 138:3	105:7 146:18	<b>top</b> 16:14,15
180:1	<b>technically</b> 31:22	138:20 139:9	154:19 155:7	60:19 61:11
<b>take</b> 19:9,17	73:17	139:14,22	<b>three-quarters</b>	67:14 76:17
22:4 24:16,17	<b>television</b> 126:15	140:9,14	173:25	80:24 81:18
44:14 59:12	<b>tell</b> 19:19 24:4	147:20 156:6,6	<b>threshold</b> 163:9	91:23 107:22
64:11 77:25	78:10 152:17	156:8,10 172:8	<b>tier</b> 15:19,19	117:14 119:23
81:14 82:2	<b>telling</b> 50:21 55:2	172:14 174:6	<b>time</b> 9:11 10:23	120:11
102:10 103:11	56:10 58:15	175:18 177:11	11:14 19:12	<b>topic</b> 126:19
118:24 124:8	<b>ten</b> 14:7 16:14	177:14 179:5	26:7 27:18 38:3	177:13
127:4 128:9,11	17:19 18:5 19:3	180:14	45:9 46:8,11	<b>topics</b> 79:9
131:22 138:19	19:7,22 21:18	<b>tests</b> 124:14,17	47:11 48:3 49:6	<b>total</b> 21:11
139:13 146:9	29:8,9,10 64:11	124:18	54:24 64:2,8	<b>Tourre</b> 1:7 3:12
146:15 147:23	<b>tend</b> 109:9	<b>text</b> 65:22 66:16	70:2 80:21 81:4	10:12 11:2,4,6
148:16 149:23	<b>tended</b> 95:2	92:14 111:14	86:3,10 109:8	35:21 172:6
159:17 162:20	162:2	111:16	125:3 129:25	173:4
163:2,10,19	<b>terms</b> 20:18 32:7	<b>Thank</b> 175:9	153:14,14	<b>Tourre's</b> 172:8
164:2 169:22	47:15 83:7	178:4	154:9,14	172:14,24
170:13	133:22,22	<b>Thanks</b> 102:12	155:17 156:4	<b>toxic</b> 96:24 97:8
<b>taken</b> 13:15	157:18 158:12	<b>thereof</b> 106:10	157:13 160:23	98:2
<b>talk</b> 46:7 85:21	177:16	<b>thing</b> 33:9 154:7	160:23 163:24	<b>Tracy</b> 88:20
132:18 148:25	<b>terribly</b> 67:11	154:12 172:18	167:23 173:25	<b>trader</b> 16:23
153:19,21	<b>testified</b> 11:19	<b>things</b> 32:10,12	174:2 176:4,14	<b>traders</b> 25:7
<b>talked</b> 43:22	52:18 53:3,6	33:8 148:25	176:20	<b>trading</b> 13:7
54:7 55:23	57:12,19 64:5	153:23,24	<b>times</b> 24:17 45:2	56:21 84:8,9
57:22 84:15	108:10 136:14	154:2,14	54:22 86:9	115:7
101:4 144:10	139:22 141:8	160:13 166:18	154:19 155:7	<b>tranche</b> 122:21
154:9 157:17	141:20 143:21	167:12 173:23	159:18,20	123:4 133:24
158:8 169:18	149:9 152:23	174:14,18	162:8	<b>tranches</b> 25:2
<b>talking</b> 66:11	155:7 168:14	<b>thinking</b> 30:6	<b>timing</b> 81:3	42:11
148:22	<b>testifying</b> 17:17	62:25	<b>tip</b> 18:3	<b>transactions</b>
<b>talks</b> 37:14 47:17	59:13 66:4	<b>third</b> 24:15 27:3	<b>title</b> 17:2 89:8	23:6,9,10,11
79:2 120:14	67:21 129:14	27:5	<b>titles</b> 116:6	25:3 26:19
<b>tape</b> 10:9 62:2	129:22 130:10	<b>thought</b> 33:16	<b>today</b> 10:15,20	33:17 71:25
64:14,21	130:16,23	47:23 52:3 59:3	10:21 17:25	72:5,9,13,15
102:13,18	138:5 172:20	62:3,14 63:3,6	176:2	80:15,18 85:17
146:17 147:9	<b>testimony</b> 17:23	69:16 71:8	<b>told</b> 17:11,11	99:19 113:19
<b>Taylor</b> 113:14	30:10 31:24	93:18 147:21	39:5,11,15	125:13 144:11
<b>team</b> 23:24 24:12	33:2,7,18 38:17	176:8 177:18	50:16 61:20	144:12 150:11
25:8 26:22	41:21 52:9 78:5	177:20	62:6 100:16	150:12 155:4
27:16 72:6 80:6	103:3 106:12	<b>thoughts</b> 161:10	108:20 110:12	164:6,24
83:18 84:13,18	106:16 108:9	<b>three</b> 4:23 5:5	<b>Tom</b> 115:7	<b>transcript</b> 4:12

5:10 35:25 64:17,25 65:3,7 67:14,15 71:22 129:10,20 130:8 131:16 179:4,8 <b>transfer</b> 108:5 <b>travel</b> 150:15 <b>Treliant</b> 174:9 <b>trial</b> 9:12 <b>tried</b> 44:23 45:8 52:2 130:22 140:24 141:8 <b>triggers</b> 125:5,19 126:6 <b>true</b> 38:2,15 108:24 112:10 127:16,21 179:4 180:13 <b>trustee</b> 27:8 <b>trustee's</b> 27:11 <b>try</b> 25:16 44:3,24 85:13 131:22 138:6,21 139:4 166:8 <b>trying</b> 43:4,5 87:13 139:15 140:6 141:18 154:11 155:21 157:11 171:20 <b>Tuesday</b> 1:15 <b>turn</b> 65:6 66:14 67:13 91:19 92:7 105:17 117:11,23 128:3,24 135:15 <b>turned</b> 121:14 <b>twelve</b> 17:19 18:6,15,15 19:7 19:22 37:19 38:10 <b>twenty</b> 21:19	<b>twice</b> 157:17 <b>two</b> 29:12,17 31:19 32:10,12 64:21 80:25 91:5 102:14 142:11 154:19 155:7,24 156:4 160:25 161:5 161:11 167:12 175:21 <b>two-page</b> 87:3 <b>type</b> 19:16 35:8 43:19,21 59:6 63:8 74:7 165:16 <b>types</b> 13:6 25:16 26:19 52:23 58:8 79:2 113:19 164:20 <b>typical</b> 159:5 164:17,19,23 170:2 177:24 <b>typically</b> 19:14 26:15 109:11 112:8 115:17 120:25 121:4 123:7 162:5 <hr/> <b>U</b> <b>U</b> 9:1 <b>UBS</b> 14:12,13 <b>uh</b> 66:18 <b>ultimate</b> 128:19 <b>ultimately</b> 72:16 99:23 102:25 130:21 <b>unaware</b> 135:8 <b>underlying</b> 47:14 50:5 123:19 <b>undermine</b> 39:16 <b>undermined</b> 38:4 <b>underperform</b> 136:11	<b>understand</b> 34:16 44:19 48:4 108:22 112:7 126:18 126:23 129:3 135:10 142:7 163:14 164:9 166:8 168:25 169:25 <b>understanding</b> 24:23 26:6 31:18,21 37:15 109:18 111:7 155:2,3 160:3 <b>understood</b> 33:5 37:17 43:5 <b>underwriter</b> 115:11 159:22 169:3 172:3 <b>underwriting</b> 20:17 174:17 <b>unit</b> 72:25 <b>United</b> 1:1 10:13 <b>universe</b> 45:14 99:18 128:14 <b>unusual</b> 125:5,8 <b>upper</b> 15:19 <b>use</b> 46:23 85:9 85:14 115:22 <b>useful</b> 47:19 <b>usual</b> 132:17 167:21 <b>usually</b> 161:19 161:24 164:15 <b>Ute</b> 150:24 <hr/> <b>V</b> <b>valid</b> 47:19 <b>value</b> 28:19 <b>variety</b> 20:13 173:23 174:10 <b>various</b> 24:15,25 28:3 70:14	120:6 144:21 <b>vein</b> 15:24 <b>version</b> 146:11 147:14 <b>versus</b> 10:12 21:12 43:10 44:13 48:24 172:19 175:18 <b>veto</b> 166:11 <b>vetoing</b> 128:13 <b>vettied</b> 108:11 <b>VI</b> 50:9 <b>videographer</b> 3:20 10:8,20 11:14 22:6,9 64:13,20 102:13,17 127:6,9 146:17 147:8 170:15 170:18 178:5 <b>videotaped</b> 1:14 2:4 10:10 <b>view</b> 58:25 62:10 68:23 69:7,10 69:14 70:25 101:11,24 127:2,18 134:9 139:2 140:5,15 142:18 148:12 154:24 156:23 157:4,18 158:12 170:21 171:6 176:23 <b>views</b> 39:6 62:15 140:20 142:12 142:16 144:6 148:24 149:19 172:23 173:3 173:11,14,18 176:2,11,19 <b>Village</b> 88:4 <b>vintage</b> 137:8 <b>vintages</b> 45:4	<b>virtually</b> 47:14 101:14 <b>visit</b> 154:17 <b>Vladimir</b> 81:21 82:9 <b>voicing</b> 161:10 <b>vs</b> 1:6 6:18 95:20 <hr/> <b>W</b> <b>W</b> 11:17 <b>Wachovia</b> 16:2,3 44:15 62:19,24 63:9,10 64:3 171:24 <b>waived</b> 9:7 <b>Wakefield</b> 113:14 <b>walked</b> 132:5 <b>Wall</b> 5:6 54:21 63:17,23 64:4,9 <b>want</b> 59:7 65:16 66:19 102:4 120:13,15 123:23 133:3,5 161:4 164:11 176:20 177:2 <b>wanted</b> 56:12,15 57:13,16 66:13 96:25 130:17 143:17 150:4 <b>wanting</b> 144:22 <b>warehouse</b> 120:14,19 121:2,14 123:24 160:15 160:17 <b>Washington</b> 3:6 <b>wasn't</b> 35:5 70:12,15,21 85:12 98:12 123:19 139:11 155:12 157:25 177:19
---	---	--	---	---

<b>watch</b> 172:10	176:10	<b>write</b> 33:24 34:5	38:11,18,21	<b>1</b>
<b>watched</b> 172:12	<b>words</b> 39:2 57:20	70:22	39:5,15 40:14	<b>1</b> 4:14 10:2 23:16
<b>wave</b> 12:14	62:12 97:22	<b>writes</b> 34:19 75:3	41:6	23:21 29:18
<b>way</b> 16:9 39:22	105:23 140:18	119:13 120:12	<b>Zimmermann's</b>	30:9,18,25,25
44:12 75:10	142:6 144:15	<b>write-down</b> 22:18	33:21 36:5,24	31:10 96:9 99:7
82:9 88:5 104:6	145:9 159:18	23:2	39:23	175:16
125:13 127:14	<b>work</b> 19:13 20:8	<b>writing</b> 54:24		<b>1/15/07</b> 5:12
131:25 135:3	24:13,19,22	55:9 144:24	<b>\$</b>	74:11
136:3,6 137:17	26:4,14 27:12	<b>written</b> 138:17	<b>\$100</b> 74:3	<b>1/19/07</b> 5:15
141:7 166:10	34:20 52:5,10	139:6	<b>\$200</b> 108:2	75:22
173:2 177:20	52:19 53:5 79:6	<b>wrote</b> 62:22	<b>\$250,000</b> 28:13	<b>1/23/07</b> 6:13
180:17	85:23,25 94:21	111:5	<b>0</b>	90:22
<b>ways</b> 20:13 57:19	95:3 130:12	<b>X</b>	<b>000222080</b>	<b>1/9/07</b> 6:8 86:22
161:25	154:4 173:24	<b>x</b> 1:3,10 4:1,11	113:10	<b>1:36</b> 147:3,10
<b>website</b> 65:5	174:3,7,8,10	5:1 6:1 7:1 8:1	<b>001062119</b> 87:4	<b>10</b> 4:14,16 5:19
<b>weighted</b> 50:14	177:20	105:25 161:4,7	<b>001066745</b> 91:4	79:14,20
<b>went</b> 78:17,20	<b>worked</b> 14:8	<b>Y</b>	<b>001067039</b> 91:8	<b>10th</b> 87:21
87:8,16 94:18	17:22 19:24	<b>Y</b> 161:7	91:11	<b>10-CV-3229(B...</b>
109:23 118:12	33:15 68:13	<b>year</b> 16:7,10,10	<b>001067041</b> 91:20	1:9
155:17 156:3	72:15,23	28:8 29:14	<b>03426345</b> 118:19	<b>10:15</b> 64:15
157:15 165:6	111:13,13	30:11 175:2	119:9	<b>10:27</b> 64:22
171:24	114:23 116:6	<b>years</b> 15:23	<b>06</b> 21:9 41:10	<b>100</b> 3:5 37:23
<b>weren't</b> 39:19,21	130:24 156:17	16:15,16 21:12	156:16	130:17,22
133:4 162:12	<b>working</b> 24:14	33:14 47:3,12	<b>06443286</b> 74:16	157:15
<b>Westreich</b> 88:18	24:15 26:17	151:8 158:16	<b>06459332</b> 75:24	<b>10020</b> 3:14
<b>Westreich's</b>	104:4 113:21	<b>York</b> 1:2,16,16	76:4	<b>104</b> 6:21
89:10	114:4 152:11	2:6,6,9 3:14	<b>06459333</b> 76:8	<b>1062119</b> 6:10
<b>We're</b> 147:9	153:22,24	10:14,17,17	<b>06480405</b> 107:15	86:24
<b>We've</b> 23:16	169:4 174:13	52:15 54:22	<b>06662708</b> 116:19	<b>1062120</b> 6:11
147:13	174:23	84:5 96:2	<b>07</b> 53:8 55:16	86:24
<b>willing</b> 13:24	<b>work-related</b>	150:21 180:3,5	59:10 107:15	<b>1066745</b> 6:15
<b>withheld</b> 111:23	154:7	180:9	<b>07076055</b> 104:24	90:24
<b>witness</b> 4:2 11:16	<b>worried</b> 160:25	<b>young</b> 158:18	<b>07844825</b> 79:17	<b>1067322</b> 6:16
29:24 60:24	<b>worse</b> 45:12 48:9	<b>Z</b>	79:21	90:24
96:10 98:15	<b>worst</b> 61:22	<b>Z</b> 161:7	<b>07844916</b> 79:17	<b>107</b> 7:3
119:3 146:12	66:19,21 138:7	<b>Zabel</b> 114:9	<b>07855367</b> 81:8	<b>11</b> 4:5 6:3 36:21
174:3 180:11	138:21	116:2	81:12	76:18 81:5,11
180:14	<b>Worth</b> 149:14	<b>zero</b> 163:5	<b>07855424</b> 81:8	<b>11/8/2006</b> 4:19
<b>witnesses</b> 33:2	<b>wouldn't</b> 15:24	<b>Zimmermann</b>	<b>088</b> 113:11	34:12
133:12	26:12 101:17	4:23 32:5 34:7	<b>09181746</b> 145:24	<b>11:16</b> 102:15
<b>woman</b> 150:23	153:6 161:17	34:19 36:8	<b>09767689</b> 8:10	<b>11:25</b> 102:19
<b>word</b> 46:25 83:8	164:13		145:20 147:15	<b>11:56</b> 127:7
112:18 122:12	<b>Wow</b> 146:7		<b>09767703</b> 8:10	<b>113</b> 7:10

<b>116</b> 7:15	<b>2</b> 4:16 10:5 23:16	40:15,20,21	10:18 179:16	<b>47.89</b> 51:19
<b>118</b> 7:19	30:15 43:24	68:22 75:17	<b>20549</b> 3:6	<hr/> <b>5</b> <hr/>
<b>12</b> 6:8 7:6 38:23	44:9,20 48:14	78:14,15,17	<b>21</b> 8:7 147:4,13	<b>5</b> 1:15 2:1 5:3
86:22 87:3	49:4 50:16 51:2	86:6,12,17 87:8	<b>22</b> 67:13	10:18 60:4,8
107:10	51:13 97:19	107:10 125:3	<b>222080</b> 7:13	159:11 162:17
<b>12:06</b> 127:10	105:17 107:23	129:15 137:19	113:5	<b>50</b> 102:22 103:5
<b>12:20</b> 34:19	135:15,16,17	140:2,4,22	<b>222088</b> 7:14	106:7 110:9
<b>12:31</b> 146:19,20	171:14,16	145:20 156:18	113:6	<b>5424</b> 81:12
<b>120</b> 87:5	<b>2:07</b> 170:16	<b>2007-AC1</b> 35:2	<b>26</b> 76:13	<b>589</b> 60:10 61:4
<b>1221</b> 2:5 3:13	<b>2:15</b> 170:19	39:25 40:10,16	<b>27</b> 61:2 103:10	<hr/> <b>6</b> <hr/>
10:16	<b>2:25</b> 178:7,8	40:23 42:11,19	110:20 145:20	<b>6</b> 5:6 39:22 51:4
<b>13</b> 6:12 90:21	<b>20</b> 4:15 8:3 10:3	50:19 51:23	<b>2980</b> 116:20	63:17,22 66:16
91:3	23:17 53:25	54:5,10 55:5	<hr/> <b>3</b> <hr/>	<b>6/1/07</b> 5:20 79:15
<b>14</b> 6:17 95:19,24	61:5,24 62:11	60:17 99:10	<b>3</b> 4:18 5:11 34:11	<b>6/26/07</b> 7:15
146:4,6 148:5	62:16 63:24	122:14 128:10	40:3,9 64:18	116:13
<b>145</b> 8:3	124:11 145:13	128:20 130:17	65:2 83:16	<b>6/29/07</b> 7:11
<b>147</b> 8:7 117:23	145:18	134:8 143:25	<b>3/27/07</b> 8:4,8	113:4
<b>15</b> 6:21 104:16	<b>2000</b> 14:5	<b>2007-1</b> 51:13	147:5	<b>6/6/07</b> 6:4 81:6
104:20,23	<b>2000s</b> 16:16	103:7	<b>3/27/2007</b> 145:14	<b>60</b> 5:3
110:3	<b>2005</b> 19:9 21:9	<b>2007-2</b> 7:5 102:5	<b>3/5/07</b> 6:21	<b>63</b> 5:6
<b>15th</b> 75:2 87:22	41:10 155:23	103:14,20	104:16	<b>64</b> 5:10
<b>16</b> 7:3 65:7 107:8	156:16,18	105:12 107:9	<b>307</b> 50:15,15	<b>6443286</b> 5:14
107:14 110:23	<b>2006</b> 19:10 28:8	<b>2007-3</b> 112:23	<b>31</b> 5:11 64:18	74:12
111:15	28:14,23 34:19	113:22 117:9	<b>321</b> 91:8	<b>6459332</b> 5:17
<b>1635</b> 75:2	35:11 40:5,7,24	119:15 122:21	<b>34</b> 4:18	<b>6459345</b> 5:18
<b>164</b> 92:8	41:2 53:8 55:16	<b>2008</b> 13:16 45:18	<b>3426345</b> 7:23	75:24
<b>17</b> 7:10 65:8,17	59:10 68:22	46:2 47:6 62:19	<b>345</b> 76:5	<b>6480405</b> 7:8
113:3,9	75:17 76:13	62:23 64:3 86:5	<b>36</b> 4:22	107:11
<b>170</b> 74:2	137:19 139:25	156:18,19,20	<hr/> <b>4</b> <hr/>	<b>6480407</b> 7:9
<b>175</b> 4:6	140:4,22	173:21	<b>4</b> 4:22 36:7 45:18	107:11
<b>177</b> 4:5	156:18	<b>2009</b> 126:14	45:25 47:6	<b>6662708</b> 7:17
<b>18</b> 4:17 7:15 10:6	<b>2006-2</b> 87:10	<b>2010</b> 5:11 17:9	67:15 162:16	116:15
23:18 116:13	88:5 90:16	30:2,3 54:2	<b>4th</b> 46:13	<b>6662980</b> 7:18
116:18 121:17	91:14	61:5,16,24	<b>4/5/07</b> 7:20	116:15
124:9	<b>2006-2007</b> 21:15	62:11,16 63:24	118:17	<b>68</b> 128:3
<b>19</b> 7:19 66:14	22:17,24 42:25	64:18 65:2	<b>40</b> 23:24	<hr/> <b>7</b> <hr/>
118:16,22	46:16,22 141:6	156:9	<b>41</b> 42:7,22	<b>7</b> 5:10 35:11
<b>192</b> 60:9,11,14	142:14 151:8	<b>2011</b> 30:14	<b>42</b> 42:7 43:17,24	64:17,24 84:16
<b>193</b> 60:10,19	163:24 176:4	139:22,24	44:9,19,21	<b>70</b> 104:25
61:12	176:14	156:7,10	49:18,23	<b>703</b> 145:20
<b>1998</b> 12:7	<b>2007</b> 7:7 14:6	<b>2012</b> 4:15,17	<b>44</b> 136:7	147:16
<hr/> <b>2</b> <hr/>	19:11 29:14,16	10:3,6 23:18,19	<b>46</b> 6:20 95:21	
	35:7 39:24	<b>2013</b> 1:15 2:1		

Ira Wagner

February 5, 2013

New York, NY

Page 206

<b>7076055</b> 6:23 104:18 <b>7076070</b> 6:24 104:18 <b>74</b> 5:12 <b>75</b> 5:15 <b>760</b> 145:25 <b>7672496</b> 4:21 34:13 <b>77</b> 32:20,21,22 128:24 <b>78</b> 33:23 <b>7844825</b> 5:22 <b>7844916</b> 5:23 <b>7855367</b> 6:6 <b>7855424</b> 6:7 <b>79</b> 5:19	<b>98</b> 12:24 <b>99</b> 12:24			
<hr/> <b>8</b> <hr/>				
<b>8</b> 5:12 34:18 37:17 74:11,15 <b>8:15</b> 35:12 <b>80s</b> 12:13,16 <b>81</b> 6:3 <b>86</b> 6:8				
<hr/> <b>9</b> <hr/>				
<b>9</b> 5:15 75:22 76:3 <b>9:02</b> 2:2 10:18 <b>9:14</b> 22:7 <b>9:18</b> 22:10 <b>90</b> 6:12 130:19 130:21 <b>90s</b> 12:24 <b>916</b> 79:21 <b>9181746</b> 8:6 145:15 <b>9181760</b> 8:6 145:16 <b>92</b> 175:16 <b>95</b> 6:17 <b>97</b> 4:21 34:13 <b>9767689</b> 147:6 <b>9767703</b> 147:7				